

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### SALES AND USE TAX

##### 1 CCR 201-4

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*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

#### **Regulation 26-101. Reserved.**

#### **Regulation 26-102.1.**

Every auctioneer acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, customs permit, or warehouseman's receipt for delivery of any tangible personal property, or who is entrusted with possession of any such personal property for the purpose of sale, shall be deemed to be the owner thereof and, upon the sale of such property, shall be required to collect the tax, file a return, and remit the tax thereon. (See C.R.S. 1973, 39-26-105(1)(a)).

A sale by an auctioneer when acting for a known or disclosed and properly licensed principal, shall be deemed to be a sale by the principal; the principal shall be responsible for collecting and remitting the tax and filing the return.

This regulation applies to lienholders, including storagemen, pawn-brokers, mechanics and artisans who sell at auctions.

Gross receipts from retail sales by an auctioneer at his established auction house, sales yard or other place of business are taxable, regardless of how the property may have been acquired or by whom it may be owned and the auctioneer is required to obtain a sales tax license.

#### **Regulation 26-102.2.5.**

In determining whether an organization is charitable, the Department of Revenue is not bound by federal regulations or policy. An organization exempt under 501(c)(3) of the Internal Revenue Code will be treated as a charitable organization for Colorado purposes unless the Department chooses to conduct an independent review and make its own determination regarding the organization's charitable status.

#### **REGULATION 39- 26-102.3**

- 1) "Doing business in this state" under C.R.S. 39-26-102(3)(a) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) maintain, directly or indirectly, an office, salesroom, warehouse, or similar place of business within the state. A person meeting these requirements must obtain a Colorado Sales Tax License. "Doing business in this state" under C.R.S. 39-26-102(3)(b) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) regularly or systematically make solicitations in this state. A person meeting these requirements should obtain a Colorado Retailer's Use Tax License or a Colorado Sales Tax License.
- 2) The solicitation required by (3)(b)(I) of section 39-26-102 C.R.S. may be by any means whatsoever, including advertising by catalogues, newspapers, radio, television, e-mail, or Internet. The solicitation need not originate in this state. It is sufficient that the vendor purposefully direct the

advertising into the state, which includes national or international advertising that includes Colorado.

3)

- a) Any retailer that does not collect Colorado tax (the “remote retailer”) and is a component member of a controlled group of corporations, which controlled group also contains a retailer with a physical presence in this state (the “in-state retailer” ), is presumed to be doing business in the state at a level sufficient to require the collection of Colorado sales tax. The remote retailer is required to register with the department and is required to collect Colorado sales tax.
- b) The presumption articulated in a) may be rebutted by the remote retailer by a showing that the in-state retailer did not engage in any constitutionally sufficient solicitation on behalf of the remote retailer.
- c) A retailer that does not collect Colorado tax is a retailer that sells taxable property or services to customers who are not exempt from sales tax, but does not collect sales or use tax.
- d) In-state retailer includes any member of the controlled group of corporations that has a controlling interest in any in-state retailer regardless of the form of doing business of the in-state retailer.

**Regulation 26-102.4.**

“The definition of “soliciting” is limited by those conditions described in National Bellas Hess, Inc. v. Illinois Dept. of Revenue, 386 U.S. 753 (1967). Solicitation does not include activities by an outstate retailer through the U.S. Mail, telephone, telegraph or common carrier. Also see National Geographic Society v. California Board of Equalization, \_\_\_\_\_ U.S. \_\_\_\_\_, 45 L.W. 4343, (Apr. 4, 1977).

**Regulation (39-) 26-102.4.5.**

For purposes of this regulation food includes food and drink.

Any food, as specified in 7 U.S.C. section 2012(g), as such section exists on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the federal food stamp program is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

Any food, as specified in 42 U.S.C. section 1786, as such section exists on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants, and children is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

If a purchase is exempt from the state sales tax as a qualified purchase with food stamps or WIC vouchers or checks, it is also exempt for Regional Transportation District (RTD) sales tax purposes and for tourism tax purposes.

Any food not purchased with federal food stamps or WIC vouchers or checks is subject to taxation or exemption as provided in paragraphs 1, 2 and 3 below:

- 1. a. (1) Food for domestic home consumption as defined by the federal food stamps program in 7 U.S.C. sec. 2012(g) is exempt from taxation as provided below, except for those items specified in 1.c. (This list of food and nonfood items under the federal food stamp program is intended as a guide and not a complete listing.) The federal food stamp program definition of food includes, among other items, meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and

vegetable juices, dairy products, coffee, tea, cocoa, candy, breath mints, condiments, spices, soft drinks, cakes, cookies, potato chips, special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, health food items (e.g., Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, rose hips powder which is used for preparing tea, and other food products which are substituted for more commonly used food items in the diet), infant formulas, and items incorporated into foods with other ingredients (e.g., pectin, lard, and vegetable oils).

(2) Seeds and plants which produce food for human consumption are exempt from sales taxes only when they are purchased with food stamps. However, for state sales tax purposes see §39-26-716(4)(b), C.R.S..

(3) Water marketed in containers and ice for human consumption are exempt from taxation, except for carbonated water as specified in 1.c.(1) of this regulation.

b. Items which are considered nonfood items under the federal food stamp program and thus are subject to sales tax include:

(1) Nonfood items even if sold in grocery or similar type stores (e.g., hardware, clothing, common household items such as cooking utensils, cleaning and paper products, soaps, toiletry articles, grooming items and cosmetics);

(2) Alcoholic beverages but excluding cooking wine, wine vinegar, and non-alcoholic cocktail mixes;

(3) Tobacco and tobacco products (except that cigarettes are exempt from the sales tax by virtue of §39-26-706(1), C.R.S.);

(4) Foods which are hot at the point of sale and which are kept above room temperature to make them palatable and suitable for immediate consumption, food marketed to be heated on the premises whether or not hot at the point of sale, and other food sold for consumption on the premises;

(5) Items not intended for human consumption (e.g., laundry starch, pet foods, other animal foods, and seeds marketed or packaged as bird seed);

(6) Items specifically labeled as being for use other than human consumption (e.g., decorative dye for hard cooked eggs);

(7) Food preservation equipment and items (e.g., pressure cookers, canning jars and lids, paraffin, freezer containers, and wrapping paper);

(8) Medicines (except that prescription drugs are exempt from the state sales tax by virtue of §39-26-717(1)(a), C.R.S.);

(9) Therapeutic products and deficiency correctors (e.g., vitamins and minerals which are marketed in various form such as tablets, capsules, powders and liquids; products such as cod liver oil which is used primarily as a source of vitamins A and D; and other such items which are primarily used for medicinal purposes or as health aids). (These products serve as supplements to food or food products rather than as food and, therefore, are not eligible. Because essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible.);

- (10) Health aids (e.g., patent medicines and other products used primarily as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies, and antacids); and
  - (11) Coffee and related food products sold to offices and commercial establishments as part of a "coffee" service.
- c. Items which may qualify as food under the federal food stamp program but do not qualify as food for purposes of the sales tax exemption (unless purchased with federal food stamps or WIC vouchers or checks) include:
- (1) Carbonated water marketed in containers (e.g., sparkling or seltzer water; however, tonic water, pop and other sugar or sugar substitute carbonated beverages do qualify for the sales tax exemption);
  - (2) Chewing gum;
  - (3) Seeds and plants to grow food (e.g., tomato or other fruit or vegetable plants or seeds, however; for state sales tax purposes see §39-26-716(4)(b), C.R.S.);
  - (4) Prepared salads, other than frozen salads, requiring refrigeration sold in any size or type of container (e.g., egg salad, potato salad, fruit salad, pasta salad, gelatin salad, bean salad, fish salad, poultry salad, meat salad, etc.) whether prepared by the retailer on site or at a warehouse, or by a manufacturer for sale to and by a retailer;
  - (5) Salad bars (i.e., cut up fruits and vegetables sold in various sized servings, usually by the pound or plate, along with accessory foods and condiments, such as soup, rolls, crackers, and salad dressings);
  - (6) Cold sandwiches other than frozen sandwiches;
  - (7) Deli trays (e.g., meats, fish, cheeses, fruits or vegetables, etc., sold on trays prepared by or for the retailer);
  - (8) Food sold by or through vending machines; and
  - (9) Prepared food or food marketed for immediate consumption as specified in paragraphs 2 or 3 below.
- d. It is not the obligation of a retailer to collect the sales tax on food marketed for domestic home consumption which after purchase is converted to or used for other purposes which are taxable. Such conversion or use is subject to any applicable sales or use tax (e.g., edible oil used to lubricate machines and food and coffee purchased for office or commercial uses).
2. While food marketed for domestic home consumption, with exceptions noted above, generally qualifies for the sales tax exemption, prepared food or food marketed for immediate consumption generally does not qualify. The following guidelines apply in determining whether food is considered food for home consumption contrasted with prepared food or food for immediate consumption:
- a. Prepared food or food marketed for immediate consumption includes all food furnished or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer.

- b. All hot foods and food marketed to be heated on the premises are considered to be prepared for immediate consumption and are therefore subject to tax regardless of the nature of the business making such sale and regardless of whether immediately consumed.
  - c. Prepared food or food marketed for immediate consumption also includes food served or furnished in or by restaurants, cafes, lunch counters, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. (See §39-26-104(1)(e) C.R.S.)
  - d. The following types of establishments typically do not sell food marketed for domestic home consumption: newsstands; gift shops; shops located in public transportation centers; offices or other public or commercial buildings; entertainment facilities (e.g., theaters); and recreation facilities (e.g., sports arenas and stadiums).
  - e. The following types of establishments typically do sell food marketed for domestic home consumption: grocery stores, convenience stores, bakeries, butcher shops, fruit and vegetable stores, and department stores.
3. In determining whether food is considered for domestic home consumption or prepared food or food for immediate consumption, the following guidelines apply to the specialized establishments enumerated below:
- a. Bakery and Pastry Shops
    - (1) Sales by bakeries or pastry shops which do not have eating facilities are not subject to tax;
    - (2) Sales by bakeries or pastry shops which have eating facilities are taxable except for items sold on a take-out or to-go basis not to be consumed at the eating facilities provided by the retailer.
  - b. Ice Cream Shops
    - (1) Sales of ice cream cones, cups, sundaes, and the like, marketed for immediate consumption are subject to tax.
    - (2) Items marketed in containers or packages for domestic home consumption, such as ice cream, ice cream bars, popsicles and fudgesicles, toppings sold in cans or jars, and cakes or pies, are not taxable.
  - c. Caterers. Normally all food sold by a caterer is subject to tax. However, if such caterer operates a retail store selling food items marketed for domestic home consumption, the rules governing taxability of food as set forth in paragraphs 1 and 2 apply. Sales by caterers of food from motor vehicles and other mobile facilities are taxable.
  - d. Restaurants, Snack Bars, Carry Outs, Etc. All food sold by restaurants and similar establishments is subject to tax. (See §39-26-104(1)(e), C.R.S. However, when such restaurants also operate a pastry, ice cream, or grocery type sales operation, the rules applicable to such establishments apply to sales made from such operations.
  - e. Liquor Stores. Food marketed for domestic home consumption by a liquor store is exempt. Alcoholic beverages, including spirituous, malt or vinous liquors, are taxable. However, cocktail mixes which do not contain alcohol, cooking wines, and wine vinegars are exempt.

- f. Street Vendors. Street vendors (e.g., push carts, mobile food stands, and the like) will generally be subject to tax on all their sales. Sales of vegetables, fruit, and other groceries marketed for domestic home consumption by mobile markets or door-to-door vendors are exempt.
- g. Vending Machines. All sales of food vended by or through machines are taxable except that all vending machine sales of 15 cents or less are exempt from the state sales tax.
- h. See, also, the exemption for certain vending machine sales in §39-26-714(2), C.R.S., which is effective on January 1, 2000, for state sales tax. For municipal and county sales taxes, the vending machine food exemption is effective only if the local government adopts the exemption by ordinance or resolution.

**Regulation 26-102.5.**

"Gross taxable sales" means the gross sales of a person during any given reporting period,

(a) Excluding:

- (1) The sales price of any property returned during the period after the sales price has been included in taxable sales, but only after the full sales price including the tax has been refunded by cash or credit;
- (2) Sales exempt from the sales tax;
- (3) The fair market value of property taken in exchange by a retailer for resale in the usual course of his business;
- (4) Any worthless account actually charged off for income tax purposes during the reporting period, to the extent such account has been included in taxable sales, except that a loss from a worthless check in excess of the taxable sale is not allowed as a bad debt deduction for the excess; and

(b) Including any recovery of a bad debt previously deducted from gross sales to determine taxable sales.

See regulation (39)-26-111 for credit sales.

Adjustments in a sales price, such as allowable discounts, rebates and credits, cannot be anticipated; i.e., the tax must be based upon the original price unless the adjustments actually have been made prior to the filing of the return wherein such sale is reported. However, if the price upon which the tax was computed and paid to the state by the vendor is subsequently adjusted prior to payment of the tax by the purchaser, a proper credit may be taken by the vendor against the tax due on the next return.

No credit for discount will be allowed to a vendor unless the related decrease in sales tax actually is passed on to the purchaser.

A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

If any vendor makes overpayment of the tax or is entitled to a credit on his tax payments because of mistake, errors or canceled sales, credit for the amount of overpayment may be taken by the vendor on a subsequent return; but if the vendor is no longer engaged in business, he should apply for a refund. (See Regulation 39-26-703(2)(e).)

If any sold article is returned to the vendor for adjustment, replacement, or exchange under a guarantee as to quality or service, and if another article is substituted pursuant to the guarantee free or at a reduced price, the tax shall be recomputed on the actual amount paid to the vendor for the substituted article, taking into consideration any other adjustments made at the time of the replacement.

**Regulation (39-) 26-102.7(a).**

"Purchase price" includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated.

An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

- (5) Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Repealed.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon. (See regulation 26-102.12.)

"Purchase price" does not include the fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price. Matthews v. State of Colo., Dept. of Revenue , 193 Colo 44, 562 P2d 415 (1977).

**Regulation 26-102.7(b).**

Any money or other consideration paid over and above the value of the exchanged property is subject to sales tax.

Please refer to Regulation 26-104.1(b) (I) (B).

**Regulation 26-102.9.**

"Retail sale" includes all sales of tangible personal property and the sales of those services specifically enumerated in the Act as rooms and accommodations, gas and electric service, steam, and telephone and telegraph service, and all such sales are subject to the tax imposed by this Act. A retail sale is a sale to the user or consumer of such tangible personal property or service. "Retail sale" does not include a wholesale sale.

For the purposes of this Article, a retail sale is a sale to the user or consumer of such tangible personal property or service whether such sale is made by a licensed vendor or is between private parties.

**Regulation 26-102.10.**

"Sale" or "sale and purchase" shall mean any transaction, except as provided in 26-102.7(b), whereby a person, in exchange for any consideration, such as money or its equivalent, property, the rendering of a service, or the promise of any of these things: (a) transfers or agrees to transfer all or part of his interest, or the interest of any other for whom he is acting as an agent, in any tangible personal property to any other person; or (b) performs or furnishes, or agrees to perform or furnish, or contracts to have another perform or furnish, any service taxable under this Act for any other person. Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.

A bona fide gift of tangible personal property is not a "sale".

**Regulation 26-102.11.**

A "room" is a regular sleeping room or unit which is a part of a hotel, apartment hotel, inn, lodging house, guest house, motor hotel, motel, mobile home, dude ranch or guest ranch, for which a charge is made for its use.

"Accommodation" includes the furnishing of space in any camp grounds, auto camp, trailer court or park, under any concession, permit, right to access, license to use, or any other agreement by or through which any such space may be used or occupied. Accommodations are exempt from taxation if rented for at least thirty consecutive days during the calendar year or preceding year.

(See Regulation 39-26-704(3).)

**Regulation 26-102.12.**

Sales and use tax applies to charges for manufacturing, producing, fabricating, and processing tangible personal property which has been made-to-order or tailor-made for the customer. Manufacturing, producing, fabricating or processing is usually deemed to have occurred when tangible personal property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means.

An operation which restores a used or worn item of tangible personal property to its essentially original form and use is not considered manufacturing, producing, fabricating or processing within the meaning of this regulation.

The amount charged the purchaser for labor or services rendered in installing and applying purchased tangible personal property is not subject to tax; provided, that such amount is separately stated and such separate statement is not to avoid the tax upon the actual sales price of tangible personal property.

Any person making a sale subject to this regulation must be licensed and may purchase tax free all articles of tangible personal property which enter into and become a component part of the article sold. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

**Regulation 39-26-102.13 [Repealed 07/01/2012 per House Bill 11-1293]**

**Regulation 26-102.14.**

The administration and enforcement of the Act has been transferred to and vested in the executive director as the administrative head of the department of revenue by Title 24, Article 35, C.R.S. 1973. Therefore, the terms “treasurer” and/or “state treasurer” as used herein mean the executive director of the department of revenue.

**Regulation 26-102.15.**

“Tangible personal property” embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged, except news papers excluded by the law.

The term does not include real property, such as land and buildings, nor tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, and is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property.

“Tangible personal property” does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or membership, or uncanceled United States postage or revenue stamps sold for postage or revenue purposes. The term also does not include water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.

An advertising supplement included in a newspaper is considered part of the newspaper and is exempt. See Special Regulation “Newspapers, Magazines And Other Publications”.

**Regulation 26-102.16.**

The retail sales tax is imposed upon the sale of tangible personal property to the user or consumer in this state and also upon the sale of telephone, telegraph, steam, gas and electric service, accommodations and the serving of meals except in the case of specific statutory exemptions.

For the purposes of this Article, this tax is imposed upon the transaction called the sale, and is applicable whether the transaction is between private parties or between a licensed vendor and vendee.

**Regulation 26-102.17.**

“Taxpayer” means any person obligated to make a return and to pay over to the executive director the tax collected or to be paid under the provisions of the Act, whether such person is a retailer, consumer or purchaser.

(J. A. Tobin Construction Co. v. Hugh H. C. Weed, Jr., 158 Colo. 430, 407 P. 2d 350 (1965).)

**Regulation 26-102.18. Reserved.**

**Regulation 26-102.19.**

“Wholesale sale” means all sales of tangible personal property or specified services to a licensed retail merchant, jobber, dealer, or wholesaler that purchases the property for resale, and all sales of tangible personal property or services specified in C.R.S. 1973, 39-26-104 to manufacturers and compounders that incorporate such tangible personal property or service into a substance, commodity or product for resale.

All sales to the user or consumer of tangible personal property or services specified in C.R.S. 1973, 39-26-104 are taxable retail sales, regardless of the purchaser's trade or business. A reporting form will be furnished annually to wholesalers to report such retail sales.

It is the duty of the vendor to collect the tax unless he is furnished with satisfactory proof that the sale is exempt by statute. Also it is the duty of the vendor to obtain the sales or store license number or other satisfactory proof if the purchase is for resale. In case of doubt, the department should be contacted or the tax collected.

It shall be presumed that any purchaser not having a valid sales tax license or store license is the ultimate user or consumer of any property that is purchased. Any sale to such a person will be a taxable retail sale regardless of the disposition of the property sold, unless the vendor can establish that the purchase was for resale in the ordinary course of the vendee's business.

#### **Regulation 26-102.20.**

The sale of tangible personal property to a person engaged in the manufacture or compounding of a product or service, where such tangible personal property becomes a physical part of such product or service, is a wholesale sale and exempt from sales tax. Any container, label or shipping case used to encase or enclose such product may be purchased tax free by the manufacturer or compounder.

Tax applies to the sale of tangible personal property to the manufacturer or compounder that purchases it for use as an aid in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment, and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

“For all the reasons we have heretofore mentioned we must conclude that to be exempt from the operation of the acts, tangible personal property purchased by a manufacturer and which enters into the processing of the manufactured product, must be a constituent part thereof, wholly or partially, by either chemical or mechanical means .....”

“Applying these definitions to the words under consideration, it would seem certain they mean that to enter into the processing of an article, substance or commodity, tangible personal property must of necessity become a constituent part of such final product in the series of continuous operations and treatment leading to this result.” *Bedford v. C.F. and I.*, 102 Colo. 538, 81 F.2d 752 (1938); position reaffirmed in *Western Electric v. Weed, Jr.*, 185 Colo. 340, 524 P2d 1369 (1974).

Examples of manufacturing aids include but are not limited to the following:

- (1) Sales of CO<sub>2</sub> gas for use in the sale of draft beer are taxable to the vendor of the beer, since the vendor buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas.

If the gas is purchased for the sole purpose of incorporating it into a product to be sold and is so incorporated into a product to be sold as in soda water or other beverages, the sale of the gas is exempt as a sale for resale.

- (2) Phosphoric and sulphuric acid used in a process known as anodizing aluminum are primarily used as electrolytes, acting as a catalyst, and do not become a component part of the aluminum objects that are processed. The processor is accordingly the consumer of such acids and is taxable at the time of purchase of such items.
- (3) Flux if used as a cleaning agent or as a means of reducing oxidation, is taxable to the manufacturer at the time of purchase. It may also be used for transmitting desirable alloys to the deposited metal. To the extent it is used for the latter purpose, it is not subject to sales tax to the manufacturer at the time of purchase. Since the different functions are not mutually exclusive, exempt and nonexempt purposes may be served simultaneously and in such cases the tax will have to be apportioned between the various uses.

- (4) Sulphur used in drying and curing fruit is regarded as used by the manufacturer, not as incorporated and resold and the tax is to be paid by the manufacturer when he purchases the sulphur.
- (5) Forged steel balls are used in a ball mill to grind silica sand to a desired fineness. In the course of the grinding, the balls wear cut, and they become incorporated into the finished product which is sold. The steel balls are purchased for the purpose of using them in the manufacturing processes and not primarily for the purpose of incorporating steel into a finished product. Accordingly, the manufacturer must pay sales tax on the steel balls at the time of purchase.
- (6) If ice is in fact used for the sole purpose of becoming an ingredient of the finished product, as where it used solely to supply all or a part of the water content of the sausage and luncheon meats, the sale of the ice may be regarded as a sale for resale and the processor is not required to pay tax at the time of purchase of the ice.  
  
If the ice or dry ice is used for any purpose other than to become an ingredient or component part of the finished product, it is purchased for a purpose other than for resale and is subject to tax to be paid at the time of purchase by the processor.
- (7) A rubber chemical used as a lubricant to facilitate mold release of rubber products, such as tires, and which may remain as a film on the finished rubber product is a manufacturing aid used as a lubricant by the manufacturer who is required to pay the sales tax at the time of purchase.
- (8) Cleaners purchased for use in preparing metal part surfaces prior to rust proofing do not become incorporated in the product and therefore the manufacturer is the user and must pay sales tax at the time of purchase.
- (9) When paint thinner, abrasives, cleaning compounds, masking tape and similar items are used by a person in painting tangible personal property, that person is the user of such items and must pay sales tax at the time of purchase.
- (10) Talc used as an anti-adhesive or lubricant in the manufacture of rubber products is a manufacturing aid and a sales tax is imposed on the manufacturer at the time of purchase.

#### **REGULATION 39-26-102.21**

##### 1) Sales of Energy

- a) *Energy sale or use prior to March 1, 2010 and after June 30, 2012.* The sale, use, storage, or consumption of electricity, coal, gas, fuel oil, steam, nuclear fuel, and coke occurring before March 1, 2010 or after June 30, 2012 are exempt from sales and use tax when used for any of the following purposes: processing, manufacturing, mining (including oil and gas exploration and production), refining, irrigation, construction, telegraph, telephone and radio communication, street and railroad transportation services, and all industrial uses. See, Special regulation 19 "Gas and Electric Services" for acceptable methods of determining the credit allowed for gas and electricity used in restaurant operations.
- b) *Energy sale and use between March 1, 2010 and June 30, 2012.* The exemption from state sales and use tax set forth in subsection 1(a)(i), above, is suspended for such sale, use, storage, or consumption occurring on or after March 1, 2010 and before July 1, 2012, and sales and use tax are due thereon, unless otherwise exempt pursuant to other statutes (e.g., sale to, or use of energy by, charitable entities, schools, and governmental entities). An energy utility whose billing cycle includes exempt sales before and taxable sales after March 1 shall prorate the tax for such periods.

- i) *Exceptions.* The suspension of the tax exemption described in subsection 1(a), above, shall not apply to purchases of:
  - (1) Diesel fuel for off-road use,
  - (2) Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel used for agricultural purposes,
  - (3) Coal, gas, fuel oil, steam, coke, or nuclear fuel used for generation of electricity,
  - (4) Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel used by railroads.

- ii) Application of exception to suspension of exemption.

HB 10-1190, which suspended the exemption described in 1(a), above, excluded from the suspension the applications described in 1(b)(i)(1)-(4). In these areas, the exemption continues to exist as described in 1(a). Thus, HB 10-1190 neither expanded nor limited the exemption in these specific areas. Off-road, agricultural, electricity generation, and railroad uses must still qualify for the exemption as described in 39-26-102(21)(a) C.R.S. and as further described in 1(a) of this rule. Thus, departmental guidance issued pursuant to this statute and rule apply for the period 3/1/2010-6/30/2012, including FYI 71 and the use of the DR 1666 form to claim the exemption.

- iii) *State-administered cities, counties, and special districts.* Energy sales described in subsection 102(21) made on or after March 1, 2010 remain exempt from state-administered city, county, and special district sales and use taxes.

- c) *Energy sale and use for residential use.* The sale, use, storage, or consumption of electricity, coal, wood, gas, fuel oil, or coke sold for residential use is exempt from tax regardless of whether such sale, use, storage, or consumption occurs before or after March 1, 2010. See, regulation 39-26-715.1(a)(II) for additional details.

- 2) *Newspaper publishers and commercial printers.* Vendors must collect the tax on all sales of equipment and materials to publishers of newspapers and commercial printers, except on sales of newsprint and printer's ink, which are expressly exempt as wholesale sales. "Newsprint" is defined as cheap, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

### 3) Definitions

- a) "Agricultural purposes" means the production of agricultural commodities as defined in 39-26-102(1) C.R.S.
- b) "Gas" means natural or manufactured gas used in the production of energy or used in industry to heat greenhouses, used by industrial plants engaged in manufacturing or used for melting metal in foundries, for firing brick kilns, or for other industrial uses.
- c) "Industrial uses" means the use of electricity, coal, gas, fuel oil, coke, or nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services as set forth in C.R.S. 39-26-104(1)(c) and (d.1).

### **Regulation 26-102.22.**

It is the duty of the vendor to collect the tax unless he is furnished with satisfactory proof that the sale is exempt by statute.

Whenever there is a disagreement between a vendor and a buyer as to whether a given sale is tax exempt under this article, it shall be the duty of the vendor to collect and the duty of the buyer to pay the tax. The vendor shall thereupon give to the buyer a receipt (a copy of the sales invoice showing the amount of sales tax collected by the vendor will usually be sufficient) and the buyer may then make application to the department for a refund.

**Regulation (39-) 26-102.23.**

If a lease or rental period is for more than three years, the lessor must collect and remit sales tax upon the rentals received from the lessee. Where an operator of a vehicle leases himself and his vehicle to another, this is not considered a lease. For leases of machinery for manufacturing, see Regulation 39-26-709(1). For leases or rentals for less than three years, see Regulation 39-26-713(1)(a).

**Regulation 26-103.1(a). Reserved.**

**Regulation 26-103.1(b). Reserved.**

**Regulation 26-103.1(c). Reserved.**

**Regulation 26-103.2. Reserved.**

**Regulation 26-103.3. Reserved.**

**Regulation 26-103.4. Reserved.**

**Regulation 26-103.5. Reserved.**

**Regulation 26-103.5.1(c)**

The direct pay permit can only prevent the payment to vendors of local government sales taxes collected by the Colorado Department of Revenue under this provision. The permit provision has no effect for local self-collected sales taxes. Under House Bill 99-1005 that enacted this section, amendments to local government sales tax statutes at C.R.S. 29-2-106(3)(c)(II), C.R.S. 30-20-604.5(2)(a.5)(II), C.R.S. 32-9-119(2)(c)(II), C.R.S. 32-13-110(2)(b)(II), C.R.S. 32-14-114(2)(b)(II), and C.R.S. 32-15-110(2)(b)(II) enable the vendor to remove the sales tax upon purchase, and for these same sales taxes require the buyer to make the direct payment of the local sales tax due. No sales tax which was applicable at point of purchase may be avoided, because this section requires the buyer to make the direct remittance of any tax so prevented at the point of purchase, regardless of the existence of a local use tax. Thus municipal and county sales taxes collected by the Department, Local Improvement District sales tax and RTD, CFD, BD, and FD sales taxes become the liability for the permit holder to pay directly to the Department of Revenue.

**Regulation 26-103.5.6**

- (a) The Director will issue a proposed order providing at least 60 days written notice of the revocation of a Colorado Sales Tax Buyer's Direct Pay Permit issued under this section via first class mail to the address recorded with the Department for the permit holder. The proposed order shall contain reasons for the revocation. The Director will issue a denial of a request for Buyer's Direct Pay Permit in the same manner.
- (b) Upon receipt of the revocation notice or denial notice, a permit holder or denied applicant will have thirty days from the date printed on the notice to file written objections signed by the taxpayer and

to request an administrative hearing under the procedures of C.R.S. 39-21-103. The permit holder may, within 60 days of the notice, elect to proceed under written brief in lieu of hearing. The request for hearing must contain the permit holder name, address and permit account number (for revocations), a response to the reasons for revocation in the revocation notice and a summary statement of the grounds for appealing the revocation or denial.

- (c) The administrative hearing will proceed under the guidelines of C.R.S. 39-21-103, and all hearings will be held in Department Offices in Denver, Colorado. The hearing will be held before the revocation is effective, or, in lieu thereof, the effective date of revocation will be extended.
- (d) Based on evidence presented at the hearing, or after the thirty days from mailing the proposed order of revocation, if no request for hearing has been filed by the taxpayer, the executive director or his delegate shall make a final determination of revocation within a reasonable time and send the taxpayer the final determination and, if ordered, a revocation notice by first-class mail as set forth in C.R.S. 39-21-105.5. Unless appeal is taken as provided in C.R.S. 39-21-105, the revocation shall be final thirty days after mailing of the final determination and revocation order.
- (e) Appeal under C.R.S. 39-21-105. The taxpayer may appeal a revocation order or denial of application within thirty days of the mailing of such order to the district court of the county wherein the taxpayer has his principal place of business. If the taxpayer's principal place of business is not within the state, venue shall be in the district court in and for the city and county of Denver. The procedures of C.R.S. 39-21-105 shall apply to the revocation of permit or denial of permits authorized under C.R.S. 39-26-103.5.
- (f) Immediate Revocation under C.R.S. 39-21-111. If the executive director of the department of revenue finds the collection of any state or state collected local tax will be jeopardized by the continuation of a Buyer's Direct Pay Permit during the period of appeal, the executive director, in his discretion, may declare the permit immediately terminated, and issue an immediate final determination revocation order. Revocation under this provision may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the executive director.

#### **Regulation 26-104.1(a).**

For the purposes of this Article, unless otherwise exempt, all sales of tangible personal property at retail in this state, whether between private parties or a licensed vendor and vendee, are subject to the imposition of the tax. "Tangible personal property" is defined in C.R.S. 39-26-102(15).

The tax is imposed upon the purchaser. However, if the transaction involves a licensed vendor, the duty is imposed upon the vendor to add the tax to the sales price and to collect and remit the tax to the state. In the event that a licensed vendor fails to collect the appropriate sales tax, the Department may assess the tax due against the vendor or against the purchaser, at its option. If no licensed vendor is involved in the transaction, or the vendor fails to collect this sales tax, the purchaser shall pay the sales tax directly to the Department of Revenue. ( J.A. Tobin Construction Co. v. Hugh H.C. Weed, Jr., 158 Colo. 430, 407 P.2d 350 (1965)).

#### **Regulation 26-104.1(b)(I)(A).**

When a trade-in of tangible personal property is received by a retailer upon the sale of tangible personal property, the tax imposed by C.R.S. 1973, 39-26-106 shall be based upon the purchase price of the tangible personal property sold, less trade-in allowance, provided the property taken in trade is to be resold in the usual course of the retailer's trade or business. This is not limited to exchanges in Colorado. Out of state trade-in's are an allowable adjustment to the purchase price. ( Matthews v. State of Colorado, Dept. of Revenue , 193 Colo. 44, 562 P.2d 415 (1977))

#### **Regulation 26-104.1(b)(I)(B).**

If such exchanged property is a vehicle as defined in C.R.S. 1973, 39-26-104(1)(b)(I)(B), the amount subject to taxation shall be the amount of money or other consideration paid over and above the value of the exchanged property. The tax will be paid by that person paying the amount of money or other consideration in excess of the property exchanged in accordance with C.R.S. 39-26-113.

**Regulation 26-104.1(b)(II). Reserved.**

**Regulation 26-104.1(c)(I) Telephone, Telegraph and Mobile Telecommunications Services.**

- (a) Prior to August 1, 2002, intrastate telephone and telegraph service is subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes but is not limited to additional listings, joint-user service, non-talking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, service connection charges, and any other charges assessed or passed on to the consumer with the exception of charges for installation or repair which are taxed according to the Special Regulation on Contractors. Telephone service is taxable whether either local or toll calls are made or telegrams are sent from telephone pay stations.
- (b) On or after August 1, 2002, all telephone and telegraph services except those services defined as mobile telecommunications services under 4 United States Code section 124(7) which are intrastate telephone or telegraph service are subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes but is not limited to additional listings, joint-user service, non-talking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, service connection charges, and any other charges assessed or passed on to the consumer with the exception of charges for installation or repair which are taxed according to the Special Regulation on Contractors. Telephone service is taxable whether either local or toll calls are made or telegrams are sent from telephone pay stations.
- (c) On or after August 1, 2002 all charges made for mobile telecommunications services as defined under 4 United States Code section 124(7), including "cellular" communications services shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use is within Colorado, or for local taxes, where a customer whose place of primary use is within the local jurisdiction imposing a local sales tax administered by the Department. Intrastate charges for service which originates and terminates within the same state of the United States are taxable, regardless of whether that state is Colorado. Charges for end-to-end interstate mobile telecommunication service of a customer whose place of primary use is within Colorado are not subject to state or state collected sales tax regardless of whether the call originates in Colorado or another state.

Determination of place of primary use is controlled by 4 United States Code (USC) section 122, as amended. On August 1, 2002 this section read:

**§122. Determination of place of primary use**

- (a) PLACE OF PRIMARY USE. - A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use (as defined in section 124). Subject to section 121, and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall -
  - (1) allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and

(2) not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.

(b) ADDRESS UNDER EXISTING AGREEMENTS. — Except as provided in section 121, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of the enactment of the Mobile Telecommunications Sourcing Act as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

Terms used in this regulation are as defined under 4 USC section 124, as amended. On August 1, 2002 the applicable subsections read:

CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES. — The term `charges for mobile telecommunications services means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(7) MOBILE TELECOMMUNICATIONS SERVICE. — The term `mobile telecommunications service' means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

(8) PLACE OF PRIMARY USE. - The term `place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primary occurs, which must be -

“(A) the residential street address or the primary business street address of the customer; and

“(B) within the licensed service area of the home service provider.

**Regulation 26-104.1(d). Reserved.**

**Regulation 26-104.1(d.1).**

Gas or electric service furnished within the state of Colorado is subject to the tax imposed by §39-26-106, C.R.S. whether furnished by public, private, mutual, cooperative, or governmental corporations or enterprises for commercial use. The tax attaches to all amounts paid by the user or consumer for gas or electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

Steam whether furnished for commercial or industrial uses, by public, private, mutual, cooperative, or governmental corporations or enterprises, is subject to the tax imposed by §29-26-106, C.R.S. unless purchased for resale in its original form.

(See Regulation 26-102.21 for certain limited exemptions.)

(See also §39-26-715(1)(a)(II), C.R.S. for exemptions on domestic consumption)

**Regulation 26-104.1(e).**

Nontaxable gratuities include cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to the sales check by the patron 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, and the amount is distributed by the vendor to the persons who actually render the service.

“Cover charges” for food, services, and entertainment are taxable unless the charges for services and entertainment are separately stated.

**Regulation (39) 26-104.1(f).**

Amounts paid for the use of furnished rooms or accommodations, as defined under, §39-26-102(11), C.R.S., 1973, are subject to the tax imposed under this section unless the rental period is for a term of thirty consecutive days or more, in which case the rental paid is exempt. (See also §39-26-704(3), C.R.S. and Regulation 39-26-704.3).

Deposits paid for rooms or accommodations are not taxable when paid in advance. When rooms or accommodations are furnished, any deposits previously paid are taxable.

**Regulation (39) 26-105.1(a). Tax Rate Change - Remittance of Sales Collected At Higher Rate.**

- (1) The state sales tax rate becomes 2.9% for all sales entered into on or after January 1, 2001. Sales entered into before January 1, 2001, are subject to the 3% tax rate even though the payment may be made after said date.
- (2) All vendors are liable for the payment of an amount equivalent to 3% of all sales made by the vendor of commodities or services as specified in section §39-26-104, C.R.S., when such sales transactions were subject to the 3% tax imposed by section §39-26-105, C.R.S., prior to January 1, 2001. This will include all taxes remitted on or about January 22, 2001, for reporting periods entirely in the calendar year 2000. Thus, all transactions actually charged a 3% tax shall be remitted as a 3% tax, regardless of the remittance date. For tax remittance periods that do not end on the last day of calendar year 2000, the retailer must compute the correct tax using both rates. Retailers who have reporting periods with two tax rates should contact the Department of Revenue internet home page ([www.revenue.state.co.us](http://www.revenue.state.co.us)) for a form to compute the correct tax.
- (3) Leases and Credit Sales. Retailers who enter into leases subject to Colorado sales tax under section §39-26-102(23), C.R.S., or credit sales and for which the sales tax is collected by the retailer in each periodic payment must collect for each such payment the sales tax at the rate in effect when the credit sales or lease was first made. Therefore, retailers who receive on or after January 1, 2001, payments for lease or credit transactions entered into before January 1, 2001, should continue to collect the sales tax at the 3% rate. Retailers who submit returns for taxes collected at the 3% rate on payments made after January 1, 2001, shall report the difference in tax collected between the 3% and the 2.9% on the excess tax line of the sales tax coupon book. Do not distribute this excess tax to the reporting columns for local or district entities.
- (4) Deferred transactions at the prior tax rate. Retailers who have conditional or other sales contracts made during the 3% tax rate period, or for vendors remitting tax on a cash basis transactions that occurred before the rate reduction, and where the tax due from the purchaser was at the 3% tax rate, shall continue to remit the tax related to all payments at the 3% rate, regardless of the tax rate on current sales at the date remitted.

- (5) For sale transactions and leases executed subsequent to December 31, 2000, the rate of tax imposed by section §39-26-106, C.R.S., is 2.9%. Therefore, where the sale transaction occurs or a lease is executed subsequent to December 31, 2000, the vendor is liable for the payment of an equivalent to two point nine percent (2.9%) of all sales made by the vendor of commodities or services as specified in section §39-26-104, C.R.S.
- (6) Due Date of Returns. Bookkeeping and accounting periods ending on the last day of a month are due on the twentieth day of the following month or the next following business day if the twentieth is a Saturday, Sunday or holiday. Other accounting periods which do not end on the last day of a month are due and shall be filed on the twentieth day following the last day of the accounting period reported or the next following business day if the twentieth day falls on a Saturday, Sunday or holiday. All returns remitted after this date are delinquent.
- (7) The vendor of tangible personal property (other than a vending machine operator who is subject to the provisions of section §39-26-714(1)(a), C.R.S., or a vendor electing to include the tax in the sales price pursuant to section §39-26-106(2)(b), C.R.S., who is acting in behalf of the state), must collect the sales tax on the selling price of commodities and services specified in the Sales Tax Act, and account for and remit the full amount of the tax.
- (8) The vendor is liable for the payment of an amount equivalent to the tax rate at the time of the sale as imposed in section §39-26-105, C.R.S., for the total amount received from taxable sales made in each month, including all sales made for less than the minimum amount subject to tax.
- (9) The application of the tax on sales of more than the minimum taxable sales amount will usually result in the collection of tax in excess of the three percent because of the "breakage". Such excess collections during the month, if any, must be included in the total amount of the sales tax for which the vendor is required to account. If a retailer operates more than one store within this state, any under collection of sales tax on a store may not be offset against an over collection of sales tax in another store. The under collection of sales tax in one month may not be offset against the over collection of sales tax in another month.
- (10) Vendors Fee or Vendors Allowance. For sales occurring on or after July 1, 2003 and before July 1, 2005, Colorado law allows a fee to vendors who timely file complete reports and remit the full tax of two and one-third percent of the tax. For sales occurring on or after July 1, 2005 the percentage allowed will be three and one-third percent of tax. The vendors fee is allowed to cover the vendor's expense of collection, conditional with timely filing of a complete tax return, all required schedules and full remittance of tax due. If the vendor is delinquent in filing the tax return, any required schedules or the tax payment, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not retain this vendor's fee and shall remit to the Executive Director an amount equal to the full amount of the tax due for the filing period.
- (11) The vendor shall make a report to the executive director of his gross sales during the preceding month, showing nontaxable sales permitted under the act. Reporting forms are furnished by the department and call for specified information. The returns and supplemental forms must be filled out in detail and supplemental forms shall be attached whenever necessary to show all the pertinent facts.
- (12) Every vendor must make a monthly return for the preceding month on or before the twentieth day of the month, unless permission has been obtained to make quarterly, seasonal or annual returns.
- (13) The report, together with remittance of the sales tax due, must be filed with the department of revenue on or before the due date. The remittance must be by check, draft or money order and made payable to the department. Do not send postage stamps. Cash payments should only be made by personal messenger.

- (14) The paragraph 7-13, above, shall not apply to organizers of special sales events unless the organizer elects to obtain a sales tax license, file the sales tax return, and remit the sales tax as provided in section §39-26-103(b.5)(IV)(B), C.R.S.

**Regulation 39-26-105.1(b).**

The executive director has authority to grant extensions of time for filing sales tax returns; but, extensions will not be granted unless the taxpayer can show that filing on or before the due date would result in an undue hardship.

**Regulation 39-26-105.1(c).**

- 1) The vendor must establish that a sale is exempt and have records sufficient to demonstrate the validity of the exemption with reference to each sale. Exempt organizations must be able to prove to the satisfaction of the vendor that they are exempt.
- 2) If the purchase is represented by the customer to be for resale, the vendor has the duty to have on file and available to any qualified representative of the department satisfactory proof that the purchase is for resale and the sales tax account number for any such customer representing to the vendor that the sale is for resale. The vendor may call the department to verify that the customer is properly licensed.
- 3) Section 24-60-1301, (Article V.2.), C.R.S. of the Multistate Tax Compact states the following in regard to exemption certificates from states other than Colorado: "Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction."

**Regulation 26-105.2.**

When an item of tangible personal property is rented with a warranty for the maintenance or servicing of the property for a given period of time, the sales tax will be imposed, collected, and paid upon the rentals payable, including the value of the warranty, if the rental is subject to the sales tax under the provisions of C.R.S. 1973, 39-26-102(23). Lessors of tangible personal property providing a warranty for the maintenance or servicing of the rental property may apply to the executive director to exclude from the rental price the average value of the cost of service included within the warranty. If written permission is granted by the executive director, the sales tax will apply to the rental price of such article of tangible personal property, exclusive of that part of the rental price which is assignable to the anticipated cost of repair labor included within the warranty.

If a separate warranty or service contract is purchased, the sales price of the warranty or service contract is not subject to a sales or use tax. However, the individual providing the warranty or service must pay sales or use tax on the purchase price of tangible personal property used to provide such service when the property is purchased or is taken from inventory for this purpose. When a vendor or lessor contracts with another unrelated entity to provide the warranty service, he shall exclude the cost of the warranty contract from the sales price subject to sales tax; in this situation the individual providing the warranty is liable for payment of tax as provided above.

**Regulations Governing Certification of Address Databases and Designation of Third-party Verifiers**

**Regulation 39-26-105.3 - Hold Harmless re: Sourcing Sales / Use Taxes**

**1) Definitions**

- a) *Address database* (“Database”) is a system by which a user of such system can determine whether an address is within the State of Colorado and one or more local tax jurisdictions. A “system” can be one or more software applications and/or other electronic processes by which the provider determines which state and local sales tax jurisdictions apply to a particular address.
- b) Local tax jurisdiction is any governmental entity located within Colorado, other than the State of Colorado, that levies a sales and/or use tax. For purposes of this regulation, references to “municipality” include tax jurisdictions that are both cities and counties. References to “special districts” include the Regional Transportation District, Scientific and Cultural Facilities District, Metropolitan Football Stadium District, Republication River Water Conservation District, rural transportation authority districts, local marketing districts, mass transit districts, multi-jurisdictional housing authority districts, regional library districts, and local improvement districts.
- c) Designated third-party verifier (“verifier”) is one or more persons whom the department has designated and said designation has not been revoked or suspended at the time of testing of the provider’s Database.

## 2) **Procedure for Certification**

- a) Upon a request for certification, the verifier shall promptly provide written notice to the department of the request for certification, and include in such notice the information required in subparagraph (c) below. The department shall promptly list on its web site the notice and Database provider’s contact information. The Database provider shall grant the State and local tax jurisdictions access to its System in order to allow the state and local jurisdictions to submit addresses for the purpose of verifying the accuracy of the Database.
- b) A Database provider may request the department certify its Database by submitting an application for certification to Colorado Department of Revenue, Attn: Taxpayer Service Division, Re: Database Certification Request, 1375 Sherman Street, Denver, Colorado 80203.
- c) The application shall contain the following information:
  - i) Name (including trade name) and address of the entity requesting certification.
  - ii) Contact Person: name, address, telephone number, and email address of the person to whom the department shall direct communications.
  - iii) System Identification. Sufficient information so as to specifically identify the System, including any version number or similar designation.
  - iv) A verifier’s report, prepared in conformity with this regulation, stating that the Database satisfies the certification criteria.
- d) The department shall review the application and, if the Database is in compliance with this regulation, issue a written certification to the provider stating that the Database is certified subject to the limitations and conditions set forth in statute and regulation.
- e) Effective Date / Expiration Date. The certification shall be effective for two years, beginning with the date that the department issues notice of certification. The certification shall expire automatically upon the expiration of two years from the effective date.

- f) List of certified Databases. The department shall list on its web site the name, address, telephone number, effective date and expiration date of the certification, a list of home rule cities and home rule counties that have enacted "hold harmless" ordinances or resolutions that are based on the department's certification, together with such other information that the department may wish to provide, concerning each provider who is certified.
- g) Regulations subject to modification. The department may amend these regulations and may require a Database provider to become re-certified under the amended regulations, even though the original certification period has not yet expired. Nothing in these regulations grants a Database provider or third-party any vested right, title, privilege, entitlement, or cause of action against the department to the continued certification of the Database or in continued use of such a Database as certified under terms and conditions that the certification was originally granted.

### 3) Report of the Verifier

- a) The report of the verifier concerning a Database shall be provided to the Department in both hard copy and in electronic format and shall contain the following information:
  - i) Verifier Identification. Name, address, and telephone number of the verifier and of a contact person employed by the verifier who conducted the verification.
  - ii) Provider Identification. Name, address, and telephone number of the Database provider and of the contact person employed by the provider who was responsible for overseeing the verification of the provider's Database.
  - iii) Database Identification. Information sufficient to allow the department to identify the system, including (1) identification by name and version date of the various software, hardware and other processes that constitute the system, (2) the location of the provider's system, (3) the data (including information related to updates to such information) relied on by the system to perform its functions, and any other information that is necessary to enable the department to identify the system.
  - iv) Date of testing. The date or date range over which the testing was conducted by the verifier.
  - v) List of test addresses. A list of addresses that constitute the Test Sample, defined below, when the Database was determined to satisfy the certification criteria.
  - vi) Test Results.
    - (1) Written documentation of the Database's response to each address in the Test Sample, including any initial or draft response, exceptions, notes, exclusions, qualifications or other information provided by the provider to the verifier in connection with the verification. The report shall identify the addresses in connection with which the test revealed an error or omission in the Database and the nature of such error or omission.
    - (2) The report of the verifier shall also be provided in an Excel or Access format that contains at least the following data fields for each address tested: state, county, municipality and special district (if more than one district applies, then a separate data field for each such district).

- (3) The report shall state whether the Database satisfied the 95% accuracy criterion of subparagraph 4(a), below, together with any qualifications, limitations and explanations necessary to fully explain the test results.
  - (4) The report shall describe the procedures used by the verifier in performing the verification, including, but not limited to, providing worksheets used in calculating the result(s) and a narrative of the process employed.
  - (5) In addition to a report on the percent accuracy of the Database as a whole, the report shall disclose the percent accuracy of the Database as to each category of taxing jurisdiction (e.g. county, municipality).
  - (6) Disputes regarding Test Sample. Database providers may challenge the accuracy of an address(es) within the Test Sample. In the event of a challenge, the verifier shall contact the relevant local tax jurisdiction(s) to verify the correctness of the address(es). Disputes between or among local tax jurisdictions regarding the location of an address shall be resolved by said jurisdictions.
- 4) **Certification Criteria.** The Database must satisfy the certification criterion set forth below in order for the department to certify the Database.
- a) **Accuracy.** The Database must be at least 95% accurate for the population of addresses in Colorado. The achievement of this accuracy standard shall be demonstrated by using a statistical sample of addresses (referred to as the "Test Sample" ). The Test Sample shall be composed of not less than 2000 randomly selected addresses from the population of addresses in Colorado. Each address will have four categories of tax jurisdictions to which the Database must provide a response (see subparagraph 4(b), below), for a total of 8000 responses. If at least 7600 of the responses are accurate, then the inference will be made that the Database has achieved the accuracy standard for the population of addresses in Colorado. A Database will not be certified if it achieves 95% accuracy only on some categories of tax, but does not achieve the degree of accuracy on the combined score for all tax categories.
  - b) **All categories of tax jurisdictions must be identifiable.** There are generally four categories of local taxing jurisdictions: state, county, municipality, and special district. A Database will not be certified if it is not capable of identifying all local tax jurisdictions within each category of tax jurisdiction. For example, a Database that does not have the capability to identify all special districts that levy sales or use tax will not be certified. The Database does not have to identify the type of tax or tax rate applicable within each local tax jurisdiction. For example, the Database must identify the county in which the address is located, but does not have to identify whether a county has a sales tax, lodging tax, or short term rental tax.
  - c) **Responses.**
    - i) A response to an address must include a response to each of the following four categories: state, county, municipality, and special district. Failure to provide a response to any category shall be deemed an error with respect to that category.
    - ii) A response in a tax category (e.g., municipality or special district) is deemed incorrect if the response identifies incorrectly or fails to identify a local tax jurisdiction in which a given address is located. If a given address is not located within a municipality or is not located within any special taxing district, the response for that address shall so state.

- d) *Access to Database by taxing jurisdictions for verification of address locations.* Taxing jurisdictions must have a way to conveniently and quickly determine whether a Database correctly places a given address within or outside their jurisdiction. Consequently, a condition of Database certification is that the Database provider provide a convenient means by which representatives of the state and local taxing jurisdictions may determine whether the Database places a given address within or outside the state or local taxing jurisdiction. Such access shall be available to the State and local tax jurisdictions by the date on which the verifier provides notice to the department of a request for verification, pursuant to subparagraph 2(a), above. The Database provider shall work cooperatively with the department and local tax jurisdictions to facilitate checking of individual addresses or groups of addresses against the database.
- e) Prompt updating of information. Should the state or local taxing jurisdiction determine that a given address is incorrectly identified in the Database as within or outside their jurisdiction, there must be a convenient means for such taxing jurisdiction to quickly inform the Database provider of this fact. Furthermore, a Database provider shall have in place a process for promptly and regularly updating and correcting its Database, including in circumstances when information concerning errors and omissions in such Database is received from state or local taxing jurisdictions. Consequently, a condition of Database certification is that:
- i) the department and local tax jurisdictions are provided a means to conveniently notify the provider that the provider's Database is in error with respect to the one or more addresses, and
  - ii) the provider agrees to, and does, promptly update its Database with information provided by the department and local taxing authorities concerning a correct address(es). Correction notices to the provider shall reflect the agreement of any local tax jurisdictions that may be affected by the re-assignment of the address or addresses in question. Updates must be at least quarterly and the provider must make reasonable efforts to include in its Database information provided by tax jurisdictions during the ninety days preceding the update; however, the information must be included in the Database no later than 120 days following the date on which the information was provided.
- f) *Version designation - record retention.* Retailers that rely on the providers Database will be entitled to be "held-harmless" in an audit, if they fail to remit or remitted tax to the wrong jurisdiction due solely to an error in the Database. Thus, it is of critical importance that the state, local taxing jurisdictions and retailers alike be able to establish what was included in the most recent version of the providers Database available at the time of the taxable transaction in question. Consequently, a condition of Database certification is that the provider provide a convenient means by which a tax jurisdiction or user can determine the most current version of the address Database information on any given date while the Database was certified under these rules. The provider must maintain such records for no less than four years from the conclusion of the certification.
- g) Creation of Test Sample. A principle responsibility of the verifier is creation of the Test Sample. In addition to the other requirements of this regulation concerning creation of the Test Sample, the verifier shall:
- i) create and review the Test Sample to determine whether the state, county, municipality, and special district associated with each such address is correct.
  - ii) provide the Test Sample to each municipality, county, and special district that may reasonably claim that one or more addresses are within their respective jurisdiction. The local taxing authorities to which the addresses are given shall

have 30 days from the date of mailing of such lists to verify whether the addresses are correctly listed as within or outside their respective taxing jurisdiction. If the local taxing authority does not accept or reject the accuracy of an address within the 30-day period, the addresses shall be deemed correct for purposes of verifying the accuracy of Databases.

iii) not use the same sample more than once when testing any given Database.

5) **Denial or revocation of certification.** The department may deny a request for certification or revoke the certification of a provider's Database for just cause. The department may reassess at any time whether the Database should continue to be certified. "Just cause" for denial or revocation of certification shall include, without limitation, that:

a) The Database is not in compliance with requirements established by statute and these regulations.

b) The provider's application contains a material misstatement(s).

c) The verification performed by the verifier was materially flawed.

d) Procedure.

i) The department shall give written notice to the provider that the department believes that certification of the provider's Database should be denied or revoked.

ii) The provider shall have 30 days from the date of mailing of said notice in which to provide the department a written response to the notice explaining in detail why its application should be granted or its certification should not be revoked.

iii) The department shall, if there are disputed issues of fact, provide the provider a hearing on said notice pursuant to §24-4-105, C.R.S.

iv) The department shall remove the name of the provider from its web site of certified providers if it determines that the certification of such provider should be revoked. The department's web site shall contain the effective date of its determination and the date on which notice of such determination was posted on the department's web site.

e) *Effective Date of Revocation.* The effective date of revocation, for purposes of a retailer being held harmless for incorrectly sourced taxes, shall be ten working days after the date the department posts on its web site, pursuant to subparagraph 5(b)(iv), above, notice of revocation of certification. Unless the taxpayer is also the Database provider, a revocation of certification shall not affect the right of the taxpayer to be held harmless, pursuant to §39-26-105.3 and 204, C.R.S., for sales and use tax liabilities for transactions that were incurred prior to the effective date of the revocation. However, a taxpayer who is also the Database provider shall not be held harmless for sales or use taxes incurred prior to the effective date of the revocation if the department determines that the provider has knowingly or recklessly disregarded the requirements of this regulation.

f) *Effect of Revocation or Expiration of Certification.* A taxpayer shall not be held harmless if the taxpayer uses such Database after the effective date of revocation or expiration date of certification.

g) *Notice to Database Users of Provider Revocation.* The provider shall give effective notice to users of its Database that it has been decertified within five working days after the

effective date of the department's determination that its certification has been revoked. Failure of a provider to provide such notice may be grounds upon which the department can, within its sole and exclusive discretion, deny future requests by the provider to be certified or to revoke certifications subsequently granted.

#### 6) Verifiers

- a) *Designation.* The department has the authority to designate one or more persons to be verifiers. The designations shall be based on the sole and exclusive judgment of the department regarding the person's expertise, experience, and performance of duties set forth herein. The department has the authority to withdraw its designation of a verifier at any time if, in the department's sole and exclusive judgment, the verifier should not be designated. The designation shall not create any right, title, privilege, or entitlement by the State of Colorado in the verifier for which a cause of action, whether in law or in equity, can be enforced against the State of Colorado.
- b) *Fee of Verifier.* The verifier may charge a provider a reasonable fee, in light of its costs and reasonable profit, for work performed in connection with this regulation. In no event is the department responsible to the verifier or provider for payment of such fee.

#### **39-26-105.5 Mandatory Electronic Funds Transfer.**

Effective for any calendar year commencing on or after January 1, 2002, a sales tax-license holder who has a state sales tax liability of more than seventy five thousand dollars for the previous calendar year must remit all sales tax payments for the following calendar year by electronic funds transfer. The year after the state tax amount exceeds the threshold, all sales taxes remitted to the Colorado Department of Revenue must be remitted electronically, including RTD, SCFD, FB, and county and municipal sales tax remitted to the Department. Do not remit sales tax for self-collecting municipalities to the State Department of Revenue. The electronic funds transfer shall be made using standard banking conventions as outlined in the application and agreement for electronic funds transfer between the taxpayer and the Department.

The publication DRP-5782 describing the EFT program and Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax-Payments" may be examined at any Colorado State Publications Depository Library (see <http://www.cde.state.co.us/stateinfo/sldepsit.htm> for a listing of locations). Or copies may be obtained from the Department Forms Room, on the first floor at 1375 Sherman Street, Denver, Colorado 80203 and via the Department internet web site at: <http://www.revenue.state.co.us/salestaxforms.html>. Scroll down the web page to the listing of forms by form number, these forms appear near the bottom of the list.

#### **Regulation 26-106.2(a).**

If the sale consists of a number of items each of which has a sales price less than the minimum taxable sale, the tax must be collected on the total sales prices of all the items.

#### **Regulation 26-106.2(b).**

A vendor who sells malt, vinous or spirituous liquors by the drink shall, at the time of making his first retail sale of such beverage, elect either of the following methods to impose the tax:

- (a) The tax may be included in fee price of the drink or
- (b) The tax may be separately stated and added to the price of the drink.

The vendor may elect to operate under method (a) for drinks sold at the bar and method (b) for drinks sold at tables, or he may elect to operate under the same method for drinks sold at the bar and tables. Once having made the election he must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the department of revenue.

If the vendor elects to use different methods on bar and table sales, he must keep adequate records. If the vendor elects to include the tax in the price of the drink, the following method must be used to determine taxable sales: exempt sales are deducted from gross sales and the difference is divided by the total of one hundred percent plus the applicable sales tax percentage.

Vendors dispensing liquor, wine or beer by the drink, who purchase ingredients which they use in mixing the drink are not required to pay sales tax on the purchase of such ingredients.

#### **Regulation 39-26-106.2(b)(c)**

Fermented malt beverages and malt, vinous or spirituous liquors are subject to sales tax. (See Regulation 26-106.2(b).)

#### **Regulation 39-26-106.3. Tax Rate - Temporary Reduced Rate on Commercial Trucks over 26,000 GVWR - Subject to Excess State Revenues.**

- 1) The reduction of the state sales tax rate on heavy trucks allowed by section 39-26-106(3) C.R.S. is effective on July 1 of certain years with sufficient excess revenues, for all sales entered into on or after July 1 of qualifying years. Sales entered into before July 1, 2001 or sales entered into during a disqualified year are subject to the tax rate imposed under section 39-16-106(1) even though the payment may be made after the effective date of a rate reduction. A lease transaction is subject to the rate of tax in effect at the first day of the lease for the entire life of the lease.
- 2) Definitions -
  - (a) "State fiscal year" means every twelve month period commencing 12:00 a.m. July 1 of one calendar year and ending 11:59 p.m. June 30 of the following calendar year. The fiscal year is designated as the fiscal year number of the June 30 year. Thus June 30, 1999 is the last day of the 1999 fiscal year, and June 30, 2000 is the last day of the 2000 fiscal year.
  - (b) "Heavy trucks" means every new or used commercial truck, truck tractor, tractor, semi-trailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds.
- 3) The state sales and use tax rate of one one-hundredth of one percent (0.0001) on heavy trucks tax pursuant to section 39-26-106(3)(a), C.R.S. is available in any given tax year only if state revenues exceed the limitation on state fiscal year spending by the amounts established in section 39-26-106(3)(a). Each March the revenue estimate prepared by the staff of the legislative council for the fiscal year in progress and ending June 30 will be used to determine the presence of sufficient excess revenues for the fiscal year. See regulation 39-22-120 for which fiscal years had excess revenues sufficient to trigger the tax rate reduction for the following fiscal year.
- 4) The state sales tax rate reduction applies only to new or used commercial truck, truck tractor, tractor, semitrailer or vehicles used in combination therewith that have a gross vehicle weight rating in excess of twenty-six thousand pounds.
- 5) The full rate of district, county or municipal sales tax remains in effect in all years.

#### **Regulation 26-108.**

Every retailer or vendor, except one selling malt, vinous or spirituous liquors by the drink and electing to include the tax in the selling price, and except vending machine operators, shall collect sales tax on all taxable sales as an item separate and distinct from the selling price. It is a misdemeanor for a vendor, with the above exceptions, to hold out or state, directly or indirectly, that the tax or any part thereof will be assumed, absorbed or refunded by the vendor or that the tax will not be added to the purchase price.

**Regulation 26-109.**

Effective January 1, 1999, all entries on the sales tax return must be rounded to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine cents must be rounded to the nearest dollar. Rounding is required on the tax return only; books, records, invoices and other sales tax documents must reflect actual tax amounts.

Approval of requests for quarterly, seasonal, annual, or thirteen four week reporting periods will be granted only if, in the opinion of the executive director, approval will not jeopardize the collection of the tax. Permission to change the time or interval for filing reports and paying tax will not be granted to a vendor who is delinquent.

If any vendor has been granted permission to file reports and pay tax on other than a monthly basis and shall become delinquent, the permission may be revoked by the department at any time. Immediately following notice of such revocation, the vendor will be required to file reports and pay tax, interest and penalties on a monthly basis.

Application for permission to file reports and pay tax on a quarterly basis, if approved, shall take effect on the first day of the next calendar quarter which begins at least fifteen (15) days after the date of approval.

If the vendor has an average tax liability of fifteen dollars (\$15) or less per month, the executive director may permit reports to be filed and tax paid on an annual basis. Wholesalers shall be required to report and pay any sales taxes owed on the same basis as any other vendor, but a licensed wholesaler who makes no retail sales can submit a no-tax return on an annual basis.

Application for permission to file reports and pay tax on an annual basis, if approved, shall take effect on January first of the next calendar year beginning at least fifteen (15) days after the date of approval. Following the approval by the executive director to file on a quarterly or annual basis, the filing of the reports and payment of the tax shall be due on the twentieth day of the month following the end of the approved reporting period.

If the vendor is engaged in a seasonal business not operated at all in the state during certain months of the year, he may apply on the prescribed application form for permission to file the reports and remit the tax only for the months of the year in which the business is operated. The applicant shall state the months during which he expects to operate the business in the state, the place or places where the business will be operated, and must notify the department of any changes thereof.

**Regulation 26-110.**

A retailer required to collect tax imposed under this section who is doing business in two or more locations within the state of Colorado may:

- (1) file a separate sales tax return for each business location within the state of Colorado, or
- (2) file a consolidated sales tax return covering all business locations within the state of Colorado. If consolidated sales tax returns are filed, the retailer must complete and return all accompanying supplemental schedules.

Undercollections and overcollections may not be offset. See regulation 26-105.1(a).

### **Regulation 26-111.**

This regulation deals only with credit sales. (Cash sales must be reported currently.)

For the purpose of this regulation, a "credit sale" is a retail sale that is created by a time payment plan, a conditional sale, or a sale secured by a chattel mortgage, whereby the remittance of the full selling price is to be paid at a future date.

If the retailer elects to report the credit sales on the cash basis, he must keep adequate and complete records to show separately the sales price of the tangible personal property, the sales tax applicable to each credit sale, and any interest, insurance or carrying charges that have been added to the sale.

When the retailer reports the credit sale on the accrual basis, he shall include the selling price in the return for the month in which the sale was made and remit the entire applicable sales tax.

The retailer on the accrual basis is allowed a deduction for bad debts on the taxable portion of worthless credit sales. No deduction for bad debts is allowable when the retailer is reporting his taxable sales on the cash basis.

When a repossessed article is resold, the transaction constitutes an entirely new, separate and distinct sale upon which the sales tax shall be collected in the regular manner.

On the sale of a motor vehicle, C.R.S. 1973, 39-26-113 requires that the retailer collect and remit all the applicable sales tax on the accrual basis. No refund or credit for sales tax paid is allowed on the repossession of a motor vehicle.

A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

### **Regulation 26-113.**

When applying for registration, title or license, every new owner of a vehicle or mobile home must produce either (1) a receipt from the department showing that the sales or use tax has been paid, or (2) a receipt on forms provided by the department showing that the vehicle was purchased from a Colorado licensed motor vehicle dealer and that the dealer has collected no sales tax or use tax is due.

The collection of sales or use tax as provided in this section does not apply to the titling, licensing or registration of motor vehicles transferred by gift or operation of law or where the transaction is otherwise exempt from the imposition of sales or use tax. See Regulation 26-102.10 for bona fide gifts.

### **Regulation 39-26-113.5 REFUNDS OF SALES AND USE TAX FOR VEHICLES USED IN INTERSTATE COMMERCE**

#### 1) Refund Calculation

The percentage of tax to be refunded will be computed by dividing the non-Colorado miles by the total miles as used in the computation of the specific ownership tax. (Example: If the total miles driven is 10,000 with 8,000 of those Colorado miles and 2,000 non-Colorado miles, the refund percentage will be 20%.)

#### 2) Prioritization of Claims

Claims will be eligible for issue based on the date they are received by the Department of Revenue. Claims will be prioritized based on the date received. Once a claim has been filed, if it is not paid in the year in which it was filed, its priority will carry over to the next year. Therefore,

the taxpayer need not file another claim in subsequent years. However, claims for leases must be filed for each of the 3 years as stated in 4).

3) Remaining balance to be refunded

- a) The annual funds available for refund is limited by §42-1-225, C.R.S. Claims will be honored based on the prioritization stated in paragraph 2 above. Claims filed after the fund has been depleted will not receive a refund for that year, but may be eligible for in future years for the year 2 and/or year 3 refund.
- b) In the event that more than one claim is received on the same date and the amount available in the fund is less than the total amount of the claims, the purchase date will be used to determine which refund claims will be issued.

4) Leases

- a) A lease must be for more than 3 years to be considered a sale and qualify for the refund.
- b) If the total sales tax is paid at the time the vehicle is leased, then the lessee may apply for a refund of the total tax paid and the refund will be calculated in the same manner listed in 1).
- c) If the tax is included in the lease payments, the applicant must wait until the last payment has been made for that calendar year before a refund claim can be submitted. The refund will be calculated based on the amount of tax paid in the previous calendar year. A separate refund claim must be submitted for each of the 3 years that the refund is allowed under 39-26-113.5
- d) If funds are available, refunds on sales tax for leases will paid as follows: For the calendar year in which the purchase was made, the refund will be calculated as stated in 39-26-113.5(1)(c)(I) a refund amount will also be calculated for years two and three. For the first calendar year after the purchase a refund will be calculated as stated in 39-26-113.5(1)(c)(II) a refund amount will also be calculated for year three. For the second calendar year after the purchased the refund will be calculated as stated in 39-26-113.5(1)(c)(III).

5) Documentation Required to Qualify for the Refund

- a) For purchases in Colorado, a copy of the retail purchase agreement from the dealer, the standard sales tax receipt (DR 0024) and any other documentation the department requests to validate the statutory requirements for the refund.
- b) For purchases made outside of Colorado, a copy of the purchase agreement, a copy of the county registration and any other documentation the department requests to validate the statutory requirements for the refund.
- c) For leases, a copy of the lease agreement, documentation stating the term of lease, the taxes paid with each lease payment and any other documentation the department requests to validate the statutory requirements for the refund.

**Regulation 26-114.1(a)(I). Reserved**

**Regulation 26-114.1(a)(II). Reserved**

**Regulation 26-114.1(a)(III). Reserved**

**Regulation 26-114.1(a)(IV). Reserved**  
**Regulation 26-114.1(a)(V). Reserved**  
**Regulation 26-114.1(a)(VI). Reserved**  
**Regulation 26-114.1(a)(VII). Reserved**  
**Regulation 26-114.1(a)(VIII). Reserved**  
**Regulation 26-114.1(a)(XI). Reserved**  
**Regulation 26-114.1(a)(XII). Reserved**  
**Regulation 26-114.1(a)(XIII). Reserved**  
**Regulation 26-114.1(a)(XIV). Reserved**  
**Regulation 26-114.1(a)(XV). Reserved**  
**Regulation 26-114.1(a)(XVI). Reserved**  
**Regulation 26-114.1(a)(XVII). Reserved**  
**Regulation 26-114.1(a)(XVIII). Reserved**  
**Regulation 26-114.1(a)(XIX). Reserved**  
**Regulation 26-114.1(a)(XX). Reserved**  
**Regulation 26-114.1(a)(XXI). Reserved**  
**Regulation 26-114.1(a)(XXII). Reserved**  
**Regulation 26-114.1(b). Reserved**  
**Regulation 26-114.1(d). Reserved**  
**Regulation 26-114.2(c). Reserved**  
**Regulation 26-114.2(d). Reserved**  
**Regulation 26-114.2(e). Reserved**  
**Regulation 26-114.6. Reserved**  
**Regulation 26-114.8. Reserved**  
**Regulation 26-114.9. Reserved**  
**Regulation 26-114.10. Reserved**  
**Regulation 26-114.11. Reserved**  
**Regulation 39-26-114(24) Reserved**

## **Regulation 26 - 116.**

### **(a) General.**

It is the duty of every person engaged or continuing in business in this state, for the transaction of which a license is required under this Part 1, and the duty of every lessor and lessee of tangible personal property for use in this state, to keep adequate and complete records. Unless the department authorizes an alternate method of recordkeeping in writing, these records should show:

- (1) Gross receipts from sales, or rental payments from leases, of tangible personal property (including any services that are a part of the sale or lease) made in this state, irrespective of whether the seller or lessor regards the receipts to be taxable or nontaxable.
- (2) All deductions allowed by law and claimed in filing returns.
- (3) Total purchase price of all tangible personal property purchased for sale or consumption or lease in this state.

These records must include the normal books of account maintained by the ordinarily prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents or original entry supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

The preceding provisions shall not apply to organizers of special sales events unless the organizer elects to obtain a sales tax license, file the sales tax return, and remit the sales tax as provided in C.R.S. 39-26-103(b.5)(IV)(B).

### **(b) Microfilm records.**

Records may be microfilmed; however, microfilm reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, etc., are not acceptable as original records. Where microfilm reproductions of supporting records are maintained, such as sales invoices, purchase invoices, credit memoranda, etc., the following conditions must be met:

- (1) Appropriate facilities are provided for preservation of the films for periods required.
- (2) Microfilm rolls are indexed cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included, and are systematically filed.
- (3) The taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for verification of tax liability.
- (4) Proper facilities are provided for the ready inspection and location of the particular records, including machines for viewing and copying the records.

A posting reference must be on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transactions for which exemption is sought.

### **(c) Records prepared by automated data processing systems.**

An ADP tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

(1) Recorded or reconstructible data.

ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

(2) General and Subsidiary Books of Account.

A general ledger, with source references, will be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.

(3) Supporting Documents and Audit Trail.

The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Department upon request. The system should be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available.

(4) Program Documentation.

A description of the ADP portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate, (A) the application being performed, (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures), and (C) the controls used to insure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

(d) Records Retention.

All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three years.

(e) Examination of Records.

All of the foregoing records must be made available for examination on request by the executive director or his authorized representatives.

**Regulation 26-117.1.**

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

Sales tax shall be remitted by the purchaser on the price paid for tangible personal property, other than inventory, acquired with the purchase of business and for use or consumption in the operation of the business. The tax shall be based on the price paid for such chattels as are recorded in the bill of sale or

purchase agreement and which constitute part of the total transaction at the time of sale or transfer. Where the transfer of ownership is a "package deal" in a lump sum transaction the sales tax shall be based on the book value set up by the purchaser for income tax depreciation purposes or, if no such value is established, the fair market value.

**Regulation 26-118.1.**

The use of recognized accounting procedures to segregate and account for the funds will be considered proper trusteeship of the funds. No statute of limitations applies to funds of the state of Colorado in the possession of the retailer and such moneys are collectible at any time after their due date upon demand of the executive director.

**Regulation 26-122.**

Persons subject to taxation under this article shall make all returns required by statute in such detail as the executive director may require, including any information necessary to carry out the purposes of this article.

**Regulation 26-123. Reserved.**

**Regulation 26-123.1. Reserved.**

**Regulation 26-125. Reserved.**

(The statute of limitations does not apply when no return has been filed, see C.R.S. 1973, 39-21-107.)

**Regulation 26-126. Reserved.**

**Regulation 26-201.1. Reserved.**

**Regulation 26-201.2. Reserved.**

**Regulation 26-201.3. Reserved.**

**Regulation (39-) 26-202.**

The primary purpose of the "use tax" is to impose a tax upon the privilege of storing, using or consuming any tangible personal property purchased at retail. The "use tax" is complementary to the sales tax in those situations where a sales tax cannot, as a practical matter, be collected, or has not, for any reason, been collected in the course of the retail transaction. A sale by any licensed or unlicensed vendor to a user or consumer and not for resale is a retail sale.

The obligation for the payment of the tax is upon the user whether the tax is called a "sales" tax or a "use" tax.

The sales tax and the use tax stand as complements and together provide a uniform tax upon either the sales, storage, use or consumption of all tangible personal property and taxable services purchased at retail. The amount of the tax is measured by the purchase price of the property or service.

Where tangible personal property is traded or exchanged between unlicensed persons, the sales or use tax is based on the fair market value of each article. Each owes the tax on the fair market value of the tangible personal property he received in exchange, except for exchanges of motor vehicles governed by §39-26-704 (5), C.R.S.

The use to which property is put, in order to bring about imposition of the tax, is not necessarily actual and ultimate usage, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the tax when the article purchased is actually used or made available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which dominion or control over the property is assumed by the purchaser.

"Consumption" means the act or process of consuming; the term includes waste, destruction, or using up.

**Regulation 26-203.1(a). Reserved.**

**Regulation 26-203.1(b). Reserved.**

**Regulation 26-203.1(c). Reserved.**

**Regulation 26-203.1(d). Reserved.**

**Regulation 26-203.1(e). Reserved.**

**Regulation 26-203.1 (f). Reserved.**

**Regulation 26-203.1 (g). Reserved.**

**Regulation 26-203.1 (i). Reserved.**

**Regulation 26-203.1(j). Reserved.**

**Regulation 26-203.1 (k). Reserved.**

**Regulation 26-203.1(1). Reserved.**

**Regulation 26 - 203.1(r). Reserved.**

**Regulation 26 - 203.1(s). Reserved.**

**Regulation 26 - 203.1(t). Reserved.**

**Regulation 26 - 203.1(u). Reserved.**

**Regulation 26 - 203.1(v). Reserved.**

**Regulation 26 - 203.1(w). Reserved.**

**Regulation 26 - 203.1(x). Reserved.**

**Regulation 26 - 203.1(y). Reserved.**

**Regulation 26 - 203.1(z). Reserved.**

**Regulation 26 - 204.1.**

Effective January 1, 1999, all entries on the consumer's use tax return must be rounded to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine cents must be rounded to the nearest dollar. Rounding is required on the tax return only; books, records, and other consumer's use tax documents must reflect actual tax amounts.

## **Retailer's Use Tax**

### **Regulation 26 - 204.2.**

Effective January 1, 1999, all entries on the retailer's use tax return must be rounded to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine must be rounded to the nearest dollar. Rounding is required on the tax return only; books, records, invoices and other retailer's use tax documents must reflect actual tax amounts.

**Any out-of-state retailer who is engaged in selling at retail and who does not maintain a location in this state, as specified in C.R.S. 39-26-102 (3)(a), shall impose, collect, and remit to the department, a "Retailer's Use Tax" on such sales, instead of collecting the retail sales tax provided in Part 1 of the Act. Such retailer, upon application, shall be issued a "Retailer's Use Tax License" which is issued without charge.**

Every outstate retailer who is doing business in this state is required to collect retailer's use tax from the purchaser regardless of whether title to the goods passes within or without this state, if the sale of tangible personal property is subject to taxation due to the storage, use or consumption of that property within this state.

All sales subject to the retailer's use tax must be reported on the forms supplied by this department, "Retailer's Use Tax Return", subject to the provisions of Part 1 of this Act.

Any retailer collecting sales or use tax thereby becomes a trustee for any such tax collected and is responsible as an agent of the State of Colorado.

### **Regulation 26 - 204.3. (See Regulation 26 - 108.)**

### **Regulation 26 - 205. Reserved.**

### **Regulation 26 - 208.**

Persons in the business of leasing vehicles or mobile homes within this state must have a Sales/Store License and must collect and remit to the Department of Revenue the state sales tax, and RTD tax if applicable, and applicable local taxes imposed by those municipalities and counties for whom the state collects local sales tax.

### **Regulation 26 - 210.**

The statute of limitations does not apply whenever a return required to be filed under this part 2 is not filed. Also see C.R.S. 39-21-107 and Dye Construction Co. v. Dolan , 41 Colo. App. 293, 589 P.2d 497 (1978).

(The statute of limitations does not apply when no return has been filed, see C.R.S. 1973, 39-21-107.)

### **Regulation 39-26-501(3)**

Definitions - "State fiscal year" means every twelve month period commencing 12:00 a.m. July 1 of one calendar year and ending 11:59 p.m. June 30 of the following calendar year. The fiscal year is designated as the fiscal year number of the June 30 year. Thus June 30, 1999 is the last day of the 1999 fiscal year, and June 30, 2000 is the last day of the 2000 fiscal year.

### **Regulation 39-26-502 SALES AND USE TAX REFUND FOR POLLUTION CONTROL EQUIPMENT.**

- (1) The refund of state sales and use tax pursuant to section 39-26-502, C.R.S. is available in any given tax year only if state revenues exceed the limitation on state fiscal year spending by the amounts established in section 39-26-502(6). Each October of each year, the state will certify if there are excess revenues in the immediately preceding fiscal year. See regulation 39-22-120 for years in which the refund is available.

**(2) Identification of Purchase Within the Refund Period - Election of Method.**

This refund program does not apply to any purchases made prior to July 1, 1999. Only purchases made in a qualifying state fiscal year qualify for refund. The first qualifying state fiscal year begins July 1, 1999 and ends June 30, 2000. There may be future fiscal years which do not qualify for the refund, surrounded by fiscal years that do qualify for the refund. This requires taxpayers to use a consistent method from year to year to define sales, purchase, storage, use or consumption (collectively referred to herein as the "purchase") to which the refund applies. The taxpayer is responsible to keep and maintain the records necessary to document all the refund claimed, including documentation to show that the appropriate optional method was used. Taxpayers who make no specific elections must use method (I). Taxpayers may use one of the methods below, or any combination of the three within the limitations of each method. The taxpayer may elect option (II), but must continue this method for three fiscal years or until after a non-refund eligible fiscal year has passed. For any fiscal year, taxpayers may use option (III) for a major project(s) or in any case where eligibility certification may not be issued until the project is complete.

- (i) **INVOICE DATE METHOD.** The primary indicator of whether the purchase qualifies as being within the fiscal year shall be the invoice date. For example, qualifying invoices dated on or after July 1, 1999 but before July 1, 2000 are eligible for the refund claim filed on or after January 1, 2001 but before April 2, 2001. The invoice date method will not include any purchase in a year for an invoice that is merely the acceptance of an order and where the actual shipping date is within a later fiscal year.
- (ii) **DELIVERY DATE OF GOODS METHOD.** The taxpayer may elect this method for all purchases over a dollar amount threshold set by the taxpayer. This dollar amount must be announced by the taxpayer with the first refund claim filed using this method. The taxpayer electing this method must continue this election, with the same amount used as the threshold, for three fiscal years or until after a non-refund eligible fiscal year has passed. Where the delivery date method is elected the taxpayer must document delivery receipt dates for all qualifying purchases greater than the dollar amount selected. Where method (III) is also used, the taxpayer must document the separation of purchases claimed as contract or certification qualified purchases under method (III). If documentation of delivery date is not maintained for qualifying invoices above the threshold amount, this method will be denied and the invoice date method imposed.
- (iii) **COMPLETED CONTRACT/CAPITALIZATION METHOD.** This method may be used where the taxpayer is awaiting certification under the terms of section 501 of this section, or where the taxpayer otherwise elects this method for a project with complete centralized records. All qualifying goods, regardless of invoice or delivery date will be considered "purchases" on the later of the date of project completion or date of capitalization and depreciation start up. Thus goods may be brought on site in a year of which the exemption exists, but may be disqualified from refund if the completion year is in a state fiscal year (as defined above) that is disqualified from refund.
  - a. Capital projects commenced prior to July 1, 1999 are excluded from this method, and must be claimed on an invoice date or delivery date method.
- (iv) **OTHER METHODS.** Other methods may be allowed, where authorized prior to filing the first refund claim using such methods, where the taxpayer assumes complete burden of providing proof as required by the terms of the proposed method and where accepted by the delegate of the Executive Director.

**(3) Refund Form.** Refunds shall be filed on the Claim for Refund, Form 4137 and contain all the information required by that form. The refund period is the July 1 through June 30 fiscal year for which a qualified surplus exists. Claims may not be filed before the following January 1, and may not be filed after the following April 1. If April 1 falls on a Saturday, Sunday or holiday, the following business day shall be the last day for filing a claim. No extension of the filing period deadline of April 1 is provided in the statute so no extension will be granted. Claims filed after April 1 of the filing year will be denied in full. Claim for an earlier fiscal year purchase may not be made with a claim filed in future years, except under the completed project method in paragraph (2)(iii) above. See section 39-21-119, C.R.S. for filing rules. Refund claims should isolate the state sales or use tax component of any tax paid on purchases from other sales tax amounts of other taxing jurisdictions.

**(4) Refund Claim Documentation. Qualifying as Pollution Control Equipment.** Identify amounts claimed by project, as appropriate to the particular claim:

- (i) If one project is the subject a claim, provide certification or description of the project or equipment purpose and use. Identify which part of section 39-26-501 C.R.S. is applicable to qualify the equipment as exempt pollution control equipment.
- (ii) For refund claims with more than one qualifying pollution control project, provide the description of pollution control projects, description of each major components function as a pollution control device. Identify by project which part of section 39-26-501 C.R.S. is applicable to qualify the project as exempt pollution control equipment. This information may be provided by assigning an alphanumeric code for each category of pollution control, a translation key for the code, and use of the code on invoices or on each entry of a spreadsheet.

**(5) Refund Claim Documentation. Verification of equipment and tax paid.**

- (i) For refund claims under \$500 or with under 20 invoices, attach copies of the invoices and indicate qualification type on invoices or explanation sheet. If consumer use tax was paid, indicate the account number and month of remittance.
- (ii) For claims over \$500 and with more than twenty purchase invoices, provide on paper a columnar worksheets or print outs with each line listing an equipment item and the invoice or delivery date, vendor name, project or type of asset, item price subject to sales or use tax, total sales tax paid, total state sales tax paid and total state use tax paid.
- (iii) Where appropriate:
  - Provide copies of the ten largest invoices and all invoices that reflect a state sales tax paid of more than \$5,000.
  - Provide Colorado account number under which use tax was paid, if applicable.
  - For all equipment purchases within one fiscal year a single vendor has collected more than \$1,000 of Colorado sales tax for which a refund is claimed, provide a listing of the vendor name, address for IRS W-9 purposes and Internal Revenue Service Taxpayer Identification Number (TIN) assigned to that taxpayer.
  - Provide the relevant portion of the business chart of accounts

**(6) Pollution Control Equipment Refund Subject to Audit.** Refunds issued under this part shall be subject to audit review by the agents of the Executive Director. When a refund of tax is issued, there has been no state sales or use tax paid on that purchase. If a refund amount is determined

to be invalid the sales tax or use tax will be assessed as an unpaid tax liability any time within the statutory assessment period as applicable under section 39-21-107 or other statutes as may apply. Penalties, interest and officer liability shall apply from the date of refund, exactly as to other unpaid sales or use taxes. Refunds may also be reclaimed under section 13-80-101(1)(m), C.R.S.

### **Regulation 39-26-601(3)**

Definitions - "State fiscal year" means every twelve month period commencing 12:00 a.m. July 1 of one calendar year and ending 11:59 p.m. June 30 of the following calendar year. The fiscal year is designated as the fiscal year number of the June 30 year. Thus June 30, 1999 is the last day of the 1999 fiscal year, and June 30, 2000 is the last day of the 2000 fiscal year.

### **Regulation 39-26-602 SALES AND USE TAX REFUND FOR STATE SALES OR USE TAX PAID ON RESEARCH AND DEVELOPMENT PROPERTY.**

#### **(1) Research and Development Property Refund**

- (a)** The refund of state sales and use tax pursuant to section 39-26-602 is 100% of the state sales and use tax paid on such property in any qualifying fiscal year. No local or district sales or use taxes are refundable.
- (b)** The refund of state sales and use tax pursuant to section 39-26-602, C.R.S. is available in any given tax year only if state revenues exceed the limitation on state fiscal year spending by the amounts established in section 39-26-602(6). Each October of each year, the state will certify if there are excess revenues in the immediately preceding fiscal year. See regulation 39-22-120 for years in which the refund is available.

#### **(2) Identification of Purchase Within the Refund Period - Election of Method.**

This refund program does not apply to any purchases made prior to July 1, 2002. Only purchases made in a qualifying state fiscal year qualify for refund. The program is first available for state fiscal year beginning on July 1, 2002 and ending June 30, 2003. That year will be qualified or disqualified when fiscal year 2003 revenues are known on or about October 1, 2003 and when ballot initiatives are considered for the November 2003 election.

There may be future fiscal years that do not qualify for the refund, surrounded by fiscal years that do qualify for the refund. This requires taxpayers to use a consistent method from year to year to define sales, purchase, storage, use or consumption (collectively referred to herein as the "purchase") to which the refund applies. The taxpayer is responsible to keep and maintain the records necessary to document all the refund claimed, including documentation to show that the appropriate optional method was used. Taxpayers who make no specific elections must use method (a). Taxpayers may use one of the methods below, or may use one method for expense items and another method for capital items. The taxpayer may elect option (b) for all or some category of expenditures, but must continue this method for three fiscal years or until after a non-refund eligible fiscal year has passed.

- (a) INVOICE DATE METHOD.** The primary indicator of whether the purchase qualifies as being within the fiscal year shall be the invoice date. For example, qualifying invoices dated on or after July 1, 2002 but before July 1, 2003 are eligible for the refund claim filed on or after January 1, 2004 but before April 1, 2004. The invoice date method will not include any purchase in a year for an invoice that is merely the acceptance of an order and where the actual shipping date is within a later fiscal year.
- (b) DELIVERY DATE OF GOODS METHOD.** The taxpayer may elect this method for all purchases over a dollar amount threshold set by the taxpayer. This dollar amount must

be announced by the taxpayer with the first refund claim filed using this method. The taxpayer electing this method must continue this election, with the same amount used as the threshold, for three fiscal years or until after a non-refund eligible fiscal year has passed. Where the delivery date method is elected the taxpayer must document delivery receipt dates for all qualifying purchases greater than the dollar amount selected. If documentation of delivery date is not maintained this method will be denied and the invoice date method imposed.

(c) **OTHER METHODS.** Other methods may be allowed, where authorized prior to filing the first refund claim using such methods, where the taxpayer assumes complete burden of providing proof as required by the terms of the proposed method and where accepted by the delegate of the Executive Director.

(3) **Refund Form.** Refunds shall be filed on the Claim for Refund, Form DR 0137 and contain all the information required by that form. The refund period is the July 1 through June 30 fiscal year for which a qualified surplus exists. Claims may not be filed before the following January 1, and may not be filed after the following April 1. If April 1 falls on a Saturday, Sunday or holiday, the following business day shall be the last day for filing a claim. No extension of the filing period deadline of April 1 is provided in the statute so no extension will be granted. Claims filed after April 1 of the filing year will be denied in full. See 39-21-119, C.R.S. for filing rules. Refund claims should isolate the state sales or use tax component of any tax paid on purchases from other sales tax amounts of other taxing jurisdictions.

(4) **Refund Claim Documentation. Qualifying as Research and Development Property.** Identify amounts claimed by expense account charged or capital project, as appropriate to the particular claim:

- (a) If one project is the subject a claim, provide certification or description of the project or equipment purpose and use. Identify which part of section 39-26-601(2) C.R.S. is applicable to qualify the equipment as exempt pollution control equipment.
- (b) For refund claims with more than one qualifying project, provide the description of projects, description of each major components function as a research and development device. Identify by project which part of section 39-26-601(3) C.R.S. is applicable to qualify the project as exempt. This information may be provided by assigning an alphanumeric code for each category of research and development, a translation key for the code, and use of the code on invoices or on each entry of a spreadsheet.

(5) **Refund Claim Documentation. Verification of equipment and tax paid.**

- (a) For refund claims under \$500 or with under 20 invoices, attach copies of the invoices and indicate qualification type on invoices or explanation sheet. If consumer use tax was paid, indicate the account number and month of remittance.
- (b) For claims over \$500 and with more than twenty purchase invoices, provide on paper a columnar worksheets or print outs with each line listing an equipment item and the invoice or delivery date, vendor name, expense category, project or type of asset, item price subject to sales or use tax, total sales tax paid, total state sales tax paid and total state use tax paid.
- (c) Where appropriate:
  - Provide copies of the ten largest invoices and all invoices that reflect a state sales tax paid of more than \$5,000.

- Provide Colorado account number under which use tax was paid, if applicable.
- For all equipment purchases within one fiscal year a single vendor has collected more than \$1,000 of Colorado sales tax for which a refund is claimed, provide a listing of the vendor name, address for IRS W-9 purposes and Internal Revenue Service Taxpayer Identification Number (TIN) assigned to that taxpayer.
- Provide the relevant portion of the business chart of accounts

**(6) Research and Development Property Sales and Use Tax Refund Subject to Audit.** Refunds issued under this part shall be subject to audit review by the agents of the Executive Director. When a refund of tax is issued, there has been no state sales or use tax paid on that purchase. If a refund amount is determined to be invalid the sales tax or use tax will be assessed as an unpaid tax liability any time within the statutory assessment period as applicable under section 39-21-107 or other statutes as may apply. Penalties, interest and officer liability shall apply from the date of refund, exactly as to other unpaid sales or use taxes. Refunds may also be reclaimed under section 13-80-101(1)(m), C.R.S.

#### **Regulation 2-106(9)**

Form M 100 has been adopted by the Colorado Department of Revenue as the standard municipal sales and use tax reporting form. This form will be reviewed annually, and any business or home rule city, town, or city and county which collects its own tax will have the opportunity to comment on the proposed revisions. In the event an immediate revision to the form is needed, such revision may be made at any time, and any business or home rule city, town or city and county which collects its own tax will have the opportunity to comment on the proposed revision.



### **Regulation 39-26-703.1**

See Regulation (39-)26-102.22. (Duty of Vendor to Collect Tax)

### **Regulation 39-26-703.2(c)**

- (1) Claims for refund shall be executed and filed with the department of revenue on forms furnished by the department and in accordance with the instructions accompanying such forms or appearing thereon.
- (2) "The refund claims shall be signed by the claimant or his authorized officer or employee."
- (3) The claim shall be supported by an affidavit of the contractor or subcontractor that the sales or use tax sought to be refunded has been paid, and that the tangible personal property so taxed has been "built in" to the structures owned and used by the tax-exempt entity, and shall indicate therein where the books and records and other substantiating evidence of payment of said tax are located, and where they may be examined by authorized representatives of the department of revenue.
- (4) The claim shall also be accompanied by a certificate of the architect, superintendent of construction, or other person who shall have personal, technical, and official knowledge that the property on which the tax has been paid and in fact been "built in" by the contractor in accordance with the specifications of the contract and in the amount required thereby.
- (5) Refunds will be made only on taxes paid by the contractor or the subcontractor within three years prior to the date the claim is filed with the department of revenue.
- (6) In order to properly verify the contents of a claim for refund, the department may require such other and additional information as may be deemed necessary before payment of the claim will be authorized.

### **Regulation 39-26-703.2(e)**

If any vendor makes overpayment of the tax, or is entitled to a credit on his tax payments because of mistakes, errors or canceled sales, in lieu of filing a claim for refund, credit for the amount of overpayment may be taken by the vendor on a subsequent return; but if the vendor is no longer engaged in business, he should apply for a refund.

### **Regulation (39-) 26-704.1**

There is no sales tax on sales to the United States government, and to the state of Colorado, or any department, institution, subdivision of the state or federal government, when purchased within its governmental capacities. To secure exemption from the sales tax, the order for the goods must be on a prescribed government form or purchase order and paid for directly to the seller by warrant or check drawn on governmental funds.

### **Regulation 39-26-704.2**

- (1) All sales which the state of Colorado is prohibited from taxing under the constitution or laws of the United States or the state of Colorado are exempt, including sales to ambassadors, consuls, and their employees who are citizens of the nation they are representing.
- (2) Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional.

- (3) Sales of tangible personal property located within this state at the time of sale and delivered within this state are taxable, irrespective of the ultimate destination of the property sold, or where the parties to the contract of sale are located, or where the contract was made or accepted or the funds paid.
- (4) Sales of tangible personal property located within this state at the time of sale and delivered to the purchaser by the vendor or by common carrier to a destination outside this state for use outside this state are not taxable. Vendor's shipping records, bills of lading, or other proof satisfactory to the executive director must be retained to substantiate any exemption allowed for such sales in interstate commerce. On single sales of tangible personal property in excess of \$25,000.00, the purchaser shall execute and the vendor shall furnish the department "A Certificate of Out of State Sale" on forms furnished by the department.
- (5) Sales of merchandise ordered for delivery in this state are not necessarily exempt, even though the merchandise may be shipped from outside this state directly to the purchaser or indirectly through the vendor.
- (6) All sales to railroads, except as provided in C.R.S. 1973, 39-26-710(1)(a) and to other common carriers doing an interstate business, to telephone and telegraph companies, and to all other agencies engaged in interstate commerce are taxable in the same manner as are sales to other persons.

#### **Regulation 39-26-704.3**

Rooms and accommodations permanently occupied are exempt. "Permanently occupied" is defined by statute as occupancy for a period of thirty or more consecutive days.

"Written agreement" includes a hotel registration or a rent receipt. A canceled check by itself shall not qualify as a written agreement.

#### **Regulation 39-26-704.4**

Sales to "schools," as defined under C.R.S. 1973, 39-26-102(13), are exempt from sales tax. If a school is conducted for private or corporate profit, sales thereto are subject to the sales tax.

#### **Regulation 39-26-705.1 (Refer to Regulation 26-102-(21).)**

#### **Regulation 39-26-706.1**

"Cigarette" is defined as a well-known, recognized, and definite article consisting of tobacco of a peculiar kind distinguished by its light color and mildness and rolled in a paper wrapper; "cigarette" does not include an article consisting of a cylindrical roll of cigar-leaf tobacco.

The sale of any tobacco product which is not a cigarette is subject to sales tax.

#### **REGULATION 39-26-707.1 ARTICLES AND CONTAINERS RE: FOOD PRODUCTS**

- 1) Nonessential articles or containers furnished in connection with sale of taxable food. On or after March 1, 2010, a retailer of food, meals, or beverages (referred to as "retailer" ) who purchases nonessential tangible personal property ("article" ) or nonessential containers or bags ("container" ) and furnishes the article or container to a consumer or user (collectively referred to as the "consumer" ) in connection with the taxable retail sale of food, meals, or beverages ("food" ), must pay sales or use tax on the purchase of the nonessential article or container.

a) Nonessential articles and containers. An article or container is nonessential if it is primarily used for the convenience of the consumer and is not necessary to transfer the food to the consumer.

i) Examples of nonessential articles or containers include, but are not limited to, non-reusable:

- utensils
- skewers
- napkins and towelettes
- bibs
- serving trays, platters, and dome lid covers to plates or platters
- placemats, tray liners, and tablecloths
- sacks
- grocery bags
- bags and bag ties for bulk grocery produce or bread
- carryout containers for leftover food sold for immediate consumption
- straws
- toothpicks
- stirring sticks
- cup sleeves
- portion dividers
- single-use baking dishes
- condiments, including ketchup, mustard, relish, and spices that are not incorporated into a prepared meal at the time it is transferred to the consumer but are provided separately, such as at a convenience counter. Condiments sold as food for domestic home consumption (e.g., condiment sales in grocery stores) are exempt from state sales and use tax. §39-26-707(1)(d), C.R.S.

ii) Examples of essential articles or containers include, but are not limited to, non-reusable:

- plates, cups, or bowls (and lids for such items) on, or in which, unwrapped or unpackaged hot or prepared food and beverages are served to the consumer;
- Cups used in vending machines dispensing beverages;

- Disposable containers or packaging material on, or in which, food is transferred to the consumer, including pizza delivery box, baskets, boxes, sleeves for French fries, buckets, clamshells or other containers if the retailer cannot transfer the food to the consumer without such article or container. However, carryout containers used to by a consumer to carry leftover meals from the restaurant are not essential.

2) Articles or Containers not furnished to consumer. A retailer is liable for sales or use tax for its purchase, use, storage, or consumption of an article or container, regardless of whether it is essential to the consumer, if the article or container is not transferred to the consumer. An article or container is treated as transferred to the consumer if the retailer makes the article or container available to consumers on the retailer's premises.

a) Examples of non-transferred articles include, but are not limited to:

- i) Reusable articles such as glassware, ceramic plates, cloth napkins, and silverware;
- ii) Non-reusable articles the retailer uses to cook or store food, such as plastic storage wrap for storage, aluminum foil used primarily for cooking, food labels, and cooking tray liners.

#### **Regulation 39-26-707.1(e)**

Food is defined in C.R.S. 1973, 39-26-102(4.5).

#### **Regulation 39-26-708.1**

Contractors and subcontractors should be aware that the exemption for charitable organizations applies only to those that qualify under C.R.S. 1973, 39-26-102(2.5) and to schools as defined in C.R.S. 1973, 39-26-102(13).

#### **Regulation 39-26-708.2(b)**

Charitable organizations are defined in C.R.S. 1973, 39-26-102(2.5).

#### **Regulation 39-26-708.3**

Every contractor or subcontractor shall apply for a certificate of exemption prior to the time the work is started. Said contractor or subcontractor shall also obtain the exemption number from the exempt organization for whom the work is performed.

#### **Regulation 39-26-709.1**

For machinery to be used predominantly in manufacturing, the greatest use of the machinery must be its use in manufacturing. If a machine has other uses in addition to its manufacturing use, the manufacturing use must be greater than 50% of all use to qualify for the exemption. For purposes of determining whether the manufacturing use of an item of machinery is greater than 50% of all use, machinery which is shut off is not in use, even while being repaired or maintained.

(A) The following are examples of direct uses in manufacturing:

- (1) Machinery which cleans or prepares raw or prepared materials for production on the manufacturing line, after manufacturing has begun and before it has stopped.

- (2) Machinery which performs testing of a particular product tested during the manufacturing process, or testing as a step in a continuous manufacturing line process.
- (3) Loader, fork lift or conveyor belt machinery integral to the manufacturing line process, moving material from inventory on the contiguous plant site, through the manufacturing line steps, and such machines moving material through the final alternation or packaging.

(B) The following are not direct uses in manufacturing, and are not exempt:

- (1) Machinery used in repair and maintenance of machines or other items, or in cleaning of machinery. Repairing, maintaining or cleaning manufacturing facilities is not manufacturing. Manufacturing is working to alter a product within the manufacturing definition, or cleaning the product in its raw, intermediate or finished state.
- (2) Machinery used in managerial, sale research and development, or other non-operational activities.

(D) The limitation imposed by C.R.S. 39-26-709(1)(e) requires that property would have qualified for the investment tax credit against federal income tax. The investment tax credit was limited to used property, and only the first \$150,000 of used property in a tax period could be claimed as a credit against federal income tax. [ §48(c)(2)(a), ref. §46(c) of the Internal Revenue Code of 1954 as it existed prior to the Tax Reform Act of 1986.] As the excess over \$150,000 could not qualify for credit against federal income tax, the excess does not qualify for the sales tax exemption. Therefore, annually, only the first \$150,000 of purchases of used machinery to be used directly and predominantly in manufacturing would qualify for this sales tax exemption. All purchases of used property in excess of that amount annually would be sales taxable.

(E) Leases of machinery or machine tools used in manufacturing are exempt under the following conditions:

- (1) The lessee must qualify for the investment tax credit (ITC) against federal income tax as was provided by Section 38 of the "Internal Revenue Code of 1954", as amended. For federal ITC to have passed through to the lessee, the lease must be for more than three years. Leases under three years may qualify if within the transaction, complete payment for the machine occurs within three years, via balloon payments, large down payments, or full amortization of all financed balance over a short term lease.
- (2) The minimum lease payments must be for more than \$500 during that three year period.
- (3) The machinery must be used in Colorado directly and predominantly in manufacturing, (i.e., meet the other statutory tests).

#### **Regulation 39-26-709.2 (Refer to Regulation 26-709.1.)**

#### **Regulation 39-26-711.1(a)**

A commercial airline is defined as an airline carrying freight or passengers on regularly schedule flights for a fee.

#### **Regulation 39-26-713.1(a)**

In order to secure this permission, the lessor must apply to the department prior to acquisition of such tangible personal property. This permission, once it has been granted, does not have to be requested for each purchase. The permission to collect tax on rentals or lease payments is in effect for all subsequent purchases, unless rescinded by the department. The department will give notice to any lessor if this

permission is rescinded. Once the election is made by the lessor to collect tax on rentals or lease payments, he must continue to operate in this manner. He cannot alternate methods of paying tax on some purchases and applying for permission to collect tax on rentals or leases on other purchases. The department will furnish application forms for applying for this permission.

If permission has not been secured prior to the time that the tangible personal property is acquired, the lessor must pay the sales tax to the vendor. If immediately thereafter, the lessor applies for and receives permission to collect the tax on the rentals or lease payments, the lessor may apply for a refund of sales tax paid at the time of acquisition of the tangible personal property being rented or leased.

When leased property is sold by the lessor, sales tax should be collected and remitted on the actual additional considerations paid for such property at the time of sale. If the leased property being sold is a motor vehicle, unless the lessor is an authorized dealer, the tax will be paid by the purchaser at the time of application for title or registration, and in that instance the lessor should furnish the lessee with a bill of sale to show the selling price to the lessee.

Out-of-state or corporate lessors must designate an agent in Colorado for service of process.

See Regulation 26-105.2 for the method of taxing repairs used in maintenance of tangible personal property rented or leased.

This regulation will hereafter be referred to as "Lease/Rental Agreement."

#### **Regulation 39-26-713.2(a)**

The "exemption statute" is intended to prevent the imposition of a use tax on tangible personal property where the consumer actually paid sales tax to a Colorado vendor or use tax to a licensed out-of-state vendor.

#### **Regulation 39-26-713.2(b)**

Use tax is a complement to sales tax. Since sales tax is imposed only on retail sales, which are defined by regulation as sales to the user or consumer of property or services sold, use tax shall not apply to the storage, use or consumption of tangible personal property purchased by a licensed retailer for resale within the regular course of a business.

Tangible personal property that was purchased tax free for resale or an ingredient of a manufactured or compounded product, and subsequently withdrawn from stock for the purchaser's own use or consumption, shall be taxed at the acquisition cost of all materials. The tax liability attaches at the time the tangible personal property is withdrawn from stock. The tax must be reported on the appropriate return provided by the Department.

The Act exempts a sale of tangible personal property which becomes an ingredient or component part of the product.

To be exempt from the operation of the sales and use tax Acts, tangible personal property purchased by a manufacturer, which property enters into the processing of the manufactured article, must become a constituent part thereof, wholly or partially, either by chemical or mechanical means. (See Regulation (39-)26-102.20.) (Also see *Western Electric v. Weed, Jr.*, 185 Colo. 340, 524 P.2d 1369 (1974) and *Bedford v. Colorado Fuel & Iron Corp.*, 102 Colo. 538, 81 P.2d 752 (1938).

#### **Regulation 39-26-713.2(c)**

(See Regulation 39-26-713.2(g) as to nonresidents acquiring residency in Colorado. (See portion below within this regulation).

**Regulation 39-26-713.2(d) (Refer to Regulations 26-704.1 and 26-718.1(a))**

**Regulation 39-26-713.2(e) (Refer to Regulation 26-102(20).)**

**Regulation 39-26-713.2(f)**

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

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

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

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

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

**Regulation 39-26-713.2(g)**

The use tax law provides an exemption as to property brought into this state by a nonresident for his own use if he becomes a resident. This exemption does not extend to a nonresident engaged in business within this state who purchases tangible personal property for use or consumption in his business.

**Regulation 39-26-715.1(a)(I)**

An exemption from sales tax is granted on sales which are subject to tax under the motor fuel tax statute, article 27 of title 39, C.R.S. 1973, as amended. This exemption applies even though such motor fuel tax is refundable or has in fact been refunded, as in the case of farmers or other nonhighway motor fuel consumers.

Aviation jet fuel sales and special fuel sales not taxed under article 27 of title 39, C.R.S. 1973, are subject to sales tax because the exemptions and dates in the law do not apply to those sales.

**Regulation 39-26-715.1(a)(II)**

The tax imposed by C.R.S. 1973, 39-26-106 shall be collected on the sale of gas and electricity, except in the case of exemption provided in this regulation.

Gas and electricity when sold for residential use are exempt from sales tax. The term "residential use" has the following meaning: the use of gas or electricity by the individual customer exclusively for domestic purposes such as lighting, refrigeration, cooking, water heating, space heating and air conditioning, in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, townhouse or mobile/trailer home used exclusively for domestic purposes. Residential use includes service to building appurtenant to the residence including garages, barns, and other minor buildings for use of the residents served through the residential meter.

Users in a private home or individual living unit, such as apartments, condominiums, townhouses and mobile trailer homes, who are served through a single meter and whose rate has been classified by P.U.C. statute or regulation as residential are automatically exempt.

Users in multi-unit apartments, mobile trailer home parks or condominium and townhouse associations who are billed through a master meter and are taking service under a commercial rate may nevertheless qualify for this exemption providing gas or electricity is used for residential use as defined herein.

Sales of butane, propane, fuel oils, coal, coke or wood are exempt from state sales tax when used for residential use as defined above.

**Regulation 39-26-715.2(b) (Refer to Regulation 26-102(21).)**

**Regulation 39-26-716.4(A)**

- 1) **Exemption.** A farm close-out sale that meets the requirements set forth in §39-26-102(4), C.R.S. and as more fully described in this regulation is exempt from sales and use tax. See, §39-26-716(4)(a), C.R.S.
- 2) **Due Diligence of auctioneer.** A farm close-out sale is often conducted by an auctioneer. An auctioneer is a retailer and responsible for collecting, reporting, and remitting sales tax on an auction sale, unless the sale is exempt or the owner has a sales tax license. §39-26-102(1.3), C.R.S. An auctioneer who is responsible for collecting sales tax must exercise due diligence to determine whether goods sold at an auction sale are exempt under the "farm close out sale" exemption. The department will presume that an auctioneer exercised due diligence if the auctioneer obtained a written declaration, signed by the farm or ranch owner or owner's agent, and the declaration contains the following:
  - a) a description of each item of property offered for sale (regardless of whether such property is actually sold) and in such detail as to allow the specific property to be identified by a third-party (e.g., VIN of motor vehicles and "disc plow" are sufficient, but "farm implement" is not sufficient);
  - b) a declaration that:
    - i) the property was used in the owner's farming or ranching operation;
    - ii) the owner/owner's agent is making or attempting to make a full and final disposition of all property used in the farming or ranching operation;
    - iii) the owner is abandoning the operation on the premises whereon the farming or ranching operation was previously conducted; and
    - iv) if the statement is signed by the owner's agent, a declaration that the owner's agent has personal knowledge of the facts supporting the statements or has confirmed with a person (whose name and address are set forth in the declaration) who has such personal knowledge, that the forgoing statements are true.
- 3) **Department may independently review declarations.** The department is not bound by such declarations and may independently review a farm close-out sale to determine whether the exemption applies.
  - a) **Purchasers.** A purchaser is liable for sales tax if the department later determines that the exemption does not apply.

- b) **Auctioneers.** An auctioneer who, through the exercise of due diligence, reasonably concludes that the sale qualifies as an exempt farm close-out sale is not liable for sales tax if the department later determines that the sale is subject to tax. An auctioneer who has reasonable grounds to believe that any property sold does not qualify for the farm close-out sale exemption must collect sales tax on such property and, if the purchaser believes that such sale is exempt, advise the purchaser that he or she may apply to the department which will evaluate whether the sale is exempt.
  - c) **Farm or Ranch Owners.** Farm and ranch owners typically are not "retailers" because they sell their farm and ranch produce at wholesale. Therefore, such owners do not have an obligation to collect tax on the sale of taxable goods. However, a farm or ranch owner who holds a sales tax license issued by the department must, among its other responsibilities as a retailer, exercise the same due diligence otherwise required of the auctioneer at a farm close-out sale.
- 4) **Claiming Farm Close-out sale exemption for motor vehicles.** The auctioneer or licensed owner shall provide, at the conclusion of the farm close-out auction sale, to the purchaser of exempt property a copy of the owner's or owner's agent's written declaration, if such declaration has been made. The purchaser of a motor vehicle sold as part of a farm close-out auction sale shall present a copy of the declaration to the county clerk when the purchaser registers the motor vehicle. The county clerk shall not collect any sales or use tax administered by the department if presented with such a declaration. If a purchaser a motor vehicle is not provided a declaration, the purchaser who believes that the purchase is exempt must pay the appropriate sales or use tax to the county clerk and may file a claim for refund with the department which will review whether the sale is exempt.
- 5) **Retained ownership of real property.** A farmer or rancher may retain ownership of his improved and unimproved real property and his personal property not used in the farming or ranching operations and still be eligible for this exemption if he is abandoning his farming or ranching operations.

**Regulation 39-26-716.4(b)**

"Livestock" means domestic farm or ranch animals such as cattle, sheep, swine, goats, llamas, rabbits, horses, and poultry. "Livestock" does not include animals such as dogs, cats, and birds kept as pets for pleasure and recreation.

"Poultry" means domesticated birds kept for eggs and meat.

"Feed for livestock" means all materials which are distributed for use as feed or for mixing in feed for "livestock" as defined above; but, "feed for livestock" does not include individual doses or injections of non-prescription drugs used or sold for use for other than nutritional purposes.

**Regulation 39-26-716.4(c)**

The terms livestock and poultry are restricted to the definitions given in Regulation 26-716.4(b)

**Regulation 39-26-717.1**

A "prescription" means any order in writing, dated and signed by a practitioner, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom a medicine, drug, or poison is ordered and directions, if any, to be placed on the label.

A "prosthetic device" is an artificial part which aids or replaces a bodily function and which is designed, manufactured or adjusted to fit a particular individual.

The foregoing descriptions also apply to prescription drugs and prosthetic devices for animals.

#### **Regulation (39-) 26-718.1(a)**

There is no sales tax on articles sold to charitable organizations in the conduct of their regular charitable functions and activities. To determine whether an organization qualifies for the exemption and so that the department may issue an exemption certificate, the following information must be submitted to the department by the organization:

- (1) A copy of the organization's federal exemption letter;
- (2) The organization's financial statement showing the source of funds and its expenditures.

A charitable organization which makes repeated sales of tangible personal property to the public and otherwise meets the definition of a retailer must have a sales tax license and collect and remit tax in the same manner as any other retailer. The fact that the merchandise sold may have been acquired by gift or donation, or that the proceeds are to be used for charitable purposes, does not make the sales exempt from tax.

Whenever a charitable organization, not holding a Colorado store or sales tax license, purchases tangible personal property (such as cards, cookies, candies, food, religious articles, etc.) which is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance, the organization's exempt status does not apply and sales tax must be paid to the vendor by the exempt organization. If such purchases are made outside Colorado or in Colorado without payment of Colorado sales tax, the tax must be paid directly to the state by the organization.

An exempt organization without a Colorado sales tax license and which only occasionally makes retail sales of tangible personal property for fund raising purposes may elect to pay Colorado sales tax to the supplier of such tangible personal property or, if the supplier is not licensed to collect Colorado sales tax, may elect to pay use tax directly to the department. After either election, the exempt organization may make such occasional retail sales without collecting sales tax.

Purchases by a nonprofit organization or association are subject to the tax if they are not charitable organizations.

- (3) Effective July 1, 2001, bingo equipment sales to non profit bingo-raffle licensee organizations are exempt, see subsection (24) of this section.

#### **Regulation 39-26-720.1**

Effective July 1, 2001, all sales of bingo equipment to a bingo-raffle licensee are exempt from sales and use tax. Bingo equipment means: With respect to bingo or lotto, the receptacle and numbers objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the board or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or lotto, or, with respect to raffles, implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence or right to participate in raffles. "Equipment" does not include electronic devices used as aids in the game of bingo.

Under current Colorado statutes, only a non-profit entity [section 12-9-102(1.8), C.R.S.] may obtain a bingo or raffle license and qualify for this exemption. The bingo licensee may rent a building for bingo, but the commercial landlord of that commercial bingo facility is not a licensee exempted by this statute. The person selling bingo supplies and equipment listed above to a bingo licensee may purchase those items to be sold tax free for resale.

### **Regulation 39-26-721.1**

"Purchase price" means the price to the final user/consumer as defined in C.R.S. 1973, 39-26-102(7).

Factory built housing includes, but is not limited to, modular homes or sectional homes, as defined in Special Regulations entitled "Modular or Sectional Homes". Factory built housing include mobile homes as defined in C.R.S. 1973, 42-1-102(82)(b), which are used primarily for residential occupancy. See Special Rules concerning manufacturers and prefabricators acting as contractors.

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### **Editor's Notes**

#### **History**

Regulations 39-26-102.3, 39-26-102.13, 39-26-102.21, 39-26-707.1 emer. rules eff. 03/01/2010.

Regulations 39-26-115, 39-26-118.2, 39-26-207 emer. rules eff 03/01/2010; expired 06/01/2010.

Regulations 39-26-102.3, 39-26-102.13, 39-26-102.21, 39-26-707.1 emer. rules eff. 06/01/2010.

Regulation 39-26-102.21 emer. rule eff. 06/28/2010.

Regulation 39-26-102.3 eff. 07/30/2010.

Regulation 39-26-102.21 eff. 08/14/2010.

Regulation 39-26-707.1 emer. rule eff. 09/14/2010.

Regulation 39-26-102.13 emer. rule eff. 09/14/2010.

Regulation 39-26-707.1 eff. 10/30/2010.

Regulation 39-26-102.13 emer. rule eff. 01/10/2011.

Regulations 39-26-102.13; 39-26-113.5 eff. 03/02/2011.

Regulations 39-26-102.4, 39-26-716.4(A) eff. 08/15/2011.

#### **Annotation**

Regulation 39-26-102.13 was repealed by House bill 11-1293, eff. 07/01/2012.