DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

[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, customhouse 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 39-26-102(1.3) AUCTIONEERS

(1) Auctioneer's Duty to Collect Tax

(a) Definitions

(i) *Auction sale*. An auction sale is a sale conducted by an auctioneer who solicits offers to purchase tangible personal property or services until the highest offer is made.

(ii) *Auctioneer*. An auctioneer is a person who sells an interest in tangible personal property or taxable services owned by the auctioneer or another person at an auction sale. An auctioneer has the legal authority to accept on behalf of the seller an offer to buy. An interest in property or services includes a lease and license. A person selling goods on consignment for another is an auctioneer if the sale is made at an auction sale. An auctioneer includes a person who is a lienholder, such as storageman, pawnbroker, motor vehicle mechanic, or artisan, and is selling the property at an auction sale to foreclose such lien.

(b) *General Rule*. An auctioneer is a retailer and, therefore, must collect, report, and remit Colorado sales tax and state-administered local sales taxes to the Department, even if the auctioneer is a disclosed agent of the owner.

(c) *Calculation of Tax*. Sales tax is calculated on the gross price paid by the buyer for the purchase of taxable tangible personal property or a taxable service, including any non-optional fee that only successful bidders must pay in order to purchase taxable goods or services, even if the non-optional fee is separately stated from the bid price paid for the auctioned item.

(i) *Examples.*

(A) Auctioneer sells restaurant equipment at auction for $10,000 and charges a fee of ten percent of the selling price, which is deducted from the total sale proceeds paid by the purchaser(s). Sales tax is calculated on the selling price paid by a successful bidder ($10,000), which includes the ten percent auctioneer's fee. Similarly, the fee is included in the sales tax calculation if the purchaser is required to pay the fee in addition to the successful bid price (i.e., tax calculated on $11,000) because the fee is included in the overall purchase price of the item.

(B) Auctioneer charges owners or bidders a flat "entrance" fee which compensates auctioneer for its cost to rent the auction facilities, advertising, insurance, and/or auctioneer's administrative overhead. The fee is collected from sellers and bidders regardless of whether the owner's good(s) sells or the bidder purchases auctioned property or a service. The fee is not included in the calculation of sales tax because the fee is charged regardless of whether there is a taxable sale of goods or services. However, the fee is included in the calculation of sales tax if the fee (whether a flat or percentage fee) is due and payable only when goods or services are sold.

(C) Auctioneer charges buyer a fee for additional services that buyer has the option, but is not required, to purchase as part of buyer's purchase of auctioned property or services, such as an optional fee for auctioneer's or seller's service of delivering the auctioned goods to buyer. The optional fee paid by buyer is not included in the sales tax calculation if, and only if, the fee is separately stated on the buyer's invoice.

(d) *Local Sales Taxes*. The location where the auction sale is conducted determines what, if any, state-administered local sales taxes apply, except as otherwise noted below. For motor vehicles sold at auction, an auctioneer, who is required to collect sales tax (see paragraph (2)(b), below), must collect the sales taxes of those state-administered local tax jurisdictions in which the location of the sale and the location where the motor vehicle will be registered are the same.

(i) *Examples.*

(A) Auctioneer conducts auction sale of office equipment at its sale yard located in Weld County. The seller is located in Arapahoe County. To facilitate the auction, the equipment is moved to the auctioneer's sale yard in Weld County. Buyers take possession of and title to the equipment at the auctioneer's Weld County auction yard. Except for motor vehicles, a sale takes place, for purposes of sales tax, where and when the purchaser takes possession of, or title to, the property. Because both possession and title are transferred in Weld County, the sale takes place in Weld County and auctioneer must collect Weld County sales tax. Auctioneer does not collect Arapahoe County sales tax, even though the seller is located in Arapahoe County because the sale takes place in Weld County.

(B) Auctioneer has a sale yard in Weld County but conducts an auction sale of restaurant equipment, including a motor vehicle owned by the restaurant, at the restaurant's place of business, which is located in Berthoud, Larimer County. Buyers take possession of and title to the restaurant equipment in Berthoud. The purchaser of the motor vehicle resides in Arapahoe County, which is where the vehicle will be registered. Auctioneer collects Berthoud city sales tax and Larimer County sales tax on all the restaurant equipment because the sale takes place in those state-administered local tax jurisdictions. Auctioneer does not collect Weld County sales tax on any of the property because the sale occurred in Berthoud, Larimer County. If the auctioneer is not a licensed automotive dealer, then the auctioneer does not collect any tax for the sale of the vehicle. If the auctioneer is a licensed automotive dealer, the auctioneer does not collect Berthoud city sales tax or Larimer county sales tax on the motor vehicle because the city and county in which the sale occurs (Berthoud / Larimer) is not the same city or county in which the vehicle will be registered (Arapahoe County).

(ii) *Exceptions*. An auctioneer does not collect the state-administered local taxes applicable to the place of sale if purchaser takes possession of the property (including possession by an agent of the purchaser, such as a transportation company engaged by buyer to pick up the property) outside the local jurisdiction where the sale takes place and in which the auctioneer does not have a business presence. See, §29-2-105(1)(b), C.R.S. (Retailer does not collect local sales tax if the property is delivered outside retailer's local tax jurisdiction).

(A) *Examples.*

(I) Auctioneer conducts an auction at its sale yard in Weld County. Purchaser A, who is located in Larimer County, uses its own vehicle to pick up the property at the auctioneer's sale yard. Purchaser B, who is located in Arapahoe County, requests auctioneer to arrange the delivery of the property by common carrier to Purchaser B. Auctioneer collects state-administered Weld County sales tax for Purchaser A because Purchaser A takes possession of the property in Weld County (i.e., the sale occurs in Weld County). For Purchaser B, auctioneer does not collect Weld County sales tax because the sale occurs where Purchaser B takes possession (and presumably title) in Arapahoe County. Auctioneer does not have sale yard or other business presence in Arapahoe County and, therefore, has no obligation to collect Arapahoe County sales tax.

(II) Same facts as example (I) above, but auctioneer has a sale yard in both Weld County and a satellite office in Arapahoe County. Same result as example (I), except auctioneer must collect Arapahoe County sales tax from Purchaser B because the sale takes place in Arapahoe County and auctioneer has a business presence in Arapahoe County.

(III) Auctioneer conducts an auction at its place of business in Weld County but the property is stored at the owner's warehouse, which is located in Pueblo County. Purchasers take delivery (and title) of the auctioned property in Pueblo County. Auctioneer does not have a satellite office in Pueblo County, but auctioneer sent three employees to Pueblo County to inventory, arrange,

and label the property and to supervise a pre-auction viewing by prospective bidders. Because the sale takes place where delivery or title pass to purchasers, the sale occurs in Pueblo County where purchasers take possession (and presumably title), not Weld County where the auctioneer and bidders are located at the time of sale. Even though auctioneer does not have an office in Pueblo County, auctioneer has sufficient business activity in Pueblo County to be required to collect Pueblo County sales tax.

(2) **Exceptions to Auctioneer's Duty to Collect**

(a) *Licensed Owners.* An auctioneer is not required to collect sales tax if the auctioneer sells taxable tangible personal property or services on behalf of a seller who, at the time of the sale, holds a current Colorado sales tax license issued by the Department. The licensed owner is responsible for collecting, remitting, and filing a sales tax return, even if the auctioneer was contractually obligated to the owner to collect the sales tax from the purchaser(s) and report and remit the tax to the Department, or if the auctioneer was contractually required to remit such collected tax to the licensed owner. An auctioneer, who is not legally required to collect tax because the owner is a licensed retailer but is collecting such tax on behalf of the owner, must disclose to the successful bidder the owner's name and owner's retail license number. An auctioneer who is not legally responsible to collect sales tax because the owner is a licensed retailer, but who nevertheless collects sales tax from a purchaser must hold the same in trust on behalf of the State of Colorado, and is liable for such tax if the tax is not remitted to the licensed seller or the Department.

(b) *Sales of motor vehicles.* An auctioneer is not required to collect sales taxes due on the sale of a motor vehicle, unless the auctioneer is licensed by Colorado as an automotive dealer pursuant to §12-6-101, et seq., C.R.S and the sale or use of the vehicle is subject to tax. § §39-26-113(7)(a) and (b), C.R.S.

(c) *Property Exempt from Sales Tax*. An auctioneer does not collect sales tax if the property is exempt from sales tax, such as an exempt farm close-out sale.

(d) *Burden of Proof*. An auctioneer has the burden of establishing with objective, verifiable documentation an exception or exemption from collecting, reporting, and remitting sales tax. An auctioneer selling on behalf of a licensed seller or to a purchaser with a sales tax exemption certificate must obtain a copy of the owner's sales tax license or, in the case of an exempt sale, the sales tax license number or the purchaser's sales tax exemption certificate, and verify that such license or certificate is valid at the time of the sale.

Cross Reference(s):

1. Please visit the Department's website (www.colorado.gov/revenue/tax) for online services available for verifying tax licenses and exemption certificates.

2. See Department Rule 39-26-716.4(a) regarding an auctioneer's duties for an exempt farm close-out sale.

3. See Department Regulation 39-26-718 for information on charitable entities conducting fundraising by auction sales.

4. See, Department Publication FYI Sales 56, "Sales Tax on Leases of Motor Vehicles and Other Tangible Personal Property" for additional information about when local sales taxes must be collected by retailers on sales of motor vehicles.

Regulation 26-102.2.5. [Repealed eff. 05/30/2014]

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 (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 reduce 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 retailers 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). [Repealed eff. 05/30/2014]

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 uncancelled 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 39-26-102.16. RETAIL SALES TAX [Repealed eff. 03/03/2014]

Regulation 26-102.17. DEFINITION OF TAXPAYER

"Taxpayer" means any person obligated to make a return and to pay over to the Department any tax collected or to be paid under Article 21 of Title 39, C.R.S., whether such person is a retailer, consumer, or purchaser.

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_2 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 39-26-103.5 DIRECT PAYMENT PERMIT

(1) **General Rule.** A buyer who holds a direct payment permit (“Qualified Buyer”) shall remit sales and use taxes directly to the Colorado Department of Revenue (“Department”) and not to the retailer. Retailers who sell taxable goods or services to a Qualified Buyer shall not collect sales tax from such buyers.

(2) **Buyer Qualifications.** An applicant, which can be an entity or individual, for a direct payment permit must meet the following conditions.

(a) *Dollar Threshold*. An applicant must have had a minimum of $7,000,000 in purchases on which Colorado state sales or use tax was owed during the twelve months preceding the application. The dollar threshold excludes purchases that are exempt from Colorado state sales and use tax, even if such purchases are subject to state-administered local sales or

use taxes. See, §29-2-105, C.R.S. for a description of the local tax base. For example, the dollar threshold excludes exempt wholesale purchases of inventory. Additionally, tangible personal property that is to be built on or affixed to real property, such as building materials and supplies, are not included in determining the dollar threshold. See, §39-26-103.5(1)(a), C.R.S.

(b) Good Standing. An applicant cannot have been delinquent in collecting, remitting, or reporting any sales, use, income, or other tax administered by the Department for the immediate three years prior to the date applicant submits its application. An applicant will not be considered delinquent in collecting, remitting, or reporting taxes for any period prior to the date the applicant was first obligated to collect, remit, and report such taxes. The Department can waive this requirement if an applicant demonstrates to the satisfaction of the director or their designee that the failure to comply with the collecting, remitting, and reporting requirements was due to reasonable cause. In determining whether reasonable cause exists, the Department will consider, among other relevant aggravating and mitigating factors, whether:

(i) the failure was due to willful or reckless disregard of applicant's tax obligations;

(ii) the applicant failed to comply on more than one occasion;

(iii) the magnitude of the failure was significant in terms of dollars or time; and

(iv) the applicant made subsequent efforts to avoid future failures.

(c) *Accounting Systems and Practices*. An applicant must have in place an accounting system and set of practices that are acceptable to the Department. The accounting system and practices must fully and accurately report the amount of sales or use tax to be reported on the appropriate sales or use tax return(s), including state-administered local tax jurisdictions. The Department may revoke a direct payment permit or may make assessments of tax, penalties, or interest if such system or practices are not adequate to enable the Department to fully and accurately collect and allocate to cities, counties, and other local taxing entities all the sales and use taxes that the Department collects on behalf of such entities.

(d) A Qualified Buyer is not required to be subject to the collection, remittance, and reporting requirements for sales taxes in order to obtain such a permit. Rather, a Qualified Buyer can be subject to the collection, remittance, and reporting requirements for any tax administered by the Department.

(3) **Effective Date.** A direct payment permit is effective from the date of issuance until December 31 of the third year following the year in which it is issued.

(4) **Buyer's Funds.** When a Qualified Buyer uses a direct payment permit, the Qualified Buyer must use its own funds when paying a retailer for a transaction to which the direct payment permit applies. Retailers cannot accept payment from persons other than the Qualified Buyer, including payment from the personal funds of an individual if the permit is held in the name of an entity. Retailers must collect tax if a Qualified Buyer is making a purchase with funds other than the Qualified Buyer's funds and will be liable for unpaid taxes for transactions paid in contravention of this subsection (4).

(5) **Revocation of Permits.**

(a) The Department may revoke a direct payment permit if the Qualified Buyer violates any statute or rule governing the administration of taxes, or if in the opinion of the Department

the Qualified Buyer becomes otherwise unable to meet any of the conditions for holding a direct payment permit. The Department shall provide written notice of the revocation by first-class mail to the last known address of the Qualified Buyer thirty days prior to the effective date of such revocation. The notice of revocation shall set forth:

(i) the factual and legal basis for revocation,

(ii) advise the Qualified Buyer of its right to appeal, and

(iii) the date the Department issued the notice.

The Department will issue a denial of a direct payment permit application in the same manner.

(b) An applicant who is denied a permit or a Qualified Buyer whose permit was revoked, may appeal the decision by submitting to the Department's executive director a written request for hearing. The notice of appeal must be received by the Department within thirty days of the date of issuance of the notice of revocation or denial and contain the permit holder's name, address, permit account number (for revocations), and the legal and factual basis explaining why the permit should not be revoked or denied. Qualified Buyer's notice of appeal shall suspend the effective date of the revocation until a final order resolving the appeal is issued by the executive director or the director's designee. The executive director or director's designee shall conduct a hearing and issue a final ruling on such appeal within a reasonable time.

(6) **Reporting Requirements.**

(a) A Qualified Buyer holding a direct payment permit must directly remit to the Department all state and state-administered city, county and special district sales taxes that would have been collected by the retailer had the Qualified Buyer purchased such goods or services without a direct payment permit.

(i) *Exceptions.* A Qualified Buyer holding a direct payment permit cannot pay county lodging taxes, county short-term rental taxes, and local marketing district taxes directly to the Department because such taxes are not sales taxes. Retailer must collect such taxes from the Qualified Buyer and remit them to the Department. See, §30-11-107.5 and §30-11-107.7, C.R.S.

(b) A Qualified Buyer must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Buyer purchases taxable goods or services with a direct payment permit.

(c) The vendor must retain a copy of Qualified Buyer's direct pay permit.

(7) **Determining Local Sales Taxes.**

(a) *Service fees*. With regard to sales taxes only, a Qualified Buyer may deduct from its remittance to the Department the service fee for state sales tax and any local service fee(s).

(b) A sale occurs when and where a Qualified Buyer takes title or possession of the good(s) or where a taxable service is performed.

(c) If the Qualified Buyer takes title or delivery of any taxable good(s) within the State of Colorado, then the Qualified Buyer shall remit the state-administered local sales taxes to the local jurisdiction(s) in which the Qualified Buyer took the title or delivery.

(d) If the Qualified Buyer takes title or delivery of any taxable good(s) outside the State of Colorado, then the Qualified Buyer shall remit use tax for the location where the Qualified Buyer first uses, stores, or consumes the goods.

(e) Sales and use taxes of home rule cities and counties cannot be paid by direct payment permit to the Department, unless the Department has agreed to collect such taxes.

(f) *Examples*.

(i) Qualified Buyer takes delivery of goods at seller's store which is located in the City and County of Denver, Regional Transportation District (RTD) and Scientific and Cultural Facilities District (CD). Qualified Buyer remits state sales tax and RTD/CD sales taxes to the Department because buyer took possession in these state-administered local tax jurisdictions. Qualified Buyer does not remit the City and County of Denver sales taxes to the Department because Denver is a home rule city and county and the Department does not administer their local taxes.

(ii) Seller, who is located in Arapahoe County and in RTD/CD special districts, ships goods with its own vehicle, or engages a common carrier (e.g., United States Postal Service, UPS, or other common carrier), to Qualified Buyer which is located in that portion of El Paso County that also includes the Pikes Peak Rural Transportation Authority. Qualified Buyer does not remit Arapahoe County or RTD/CD special districts sales taxes because the sale does not occur in those local tax jurisdictions. Qualified Buyer remits Colorado state, El Paso County, and Pikes Peak Rural Transportation Authority sales taxes because the sale takes place in those state-administered local tax jurisdictions.

(iii) The same facts occur as in Example ii, except Qualified Buyer engages a third-party transportation company to pick up the goods from seller's store. The Department will presume the third-party transportation company is acting as Qualified Buyer's agent and the sale occurs in the local tax jurisdiction in which the third-party takes delivery from seller. Therefore, Qualified Buyer remits Colorado state, Arapahoe County, RTD, and CD special district sales taxes to the Department.

Regulation 26-103.5.6 [Repealed eff. 05/30/2014]

Regulation 39-26-104(1)(A) TAX ON TANGIBLE PERSONAL PROPERTY

(1) **General Rule.** Unless otherwise exempt, all retail sales of tangible personal property in this state, whether between private parties or a licensed vendor and vendee, are subject to the imposition of sales tax. Sales tax is also levied upon the sale of telephone, telegraph, steam, gas, and electric services, accommodations and the serving of meals, except in the case of specific statutory exemptions.

(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 price of all the items.

(2) **Imposition of Tax.** The tax is imposed upon the purchaser.

(a) 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 Department.

(b) If the seller is a non-licensed vendor, or the licensed vendor fails to collect the sales tax, the purchaser shall pay the sales tax directly to the Department. If the Department has made available means to confirm the validity of a license, a purchaser who pays sales tax to a retailer who does not hold a valid retail, wholesale, or retailer's sales or use tax license issued by the Department remains liable for such tax unless the non-licensed retailer pays such tax to the Department.

(c) In the event that a licensed vendor fails to collect the appropriate sales tax, the Department may assess the sales tax due against the vendor or the purchaser, in its discretion.

(i) A purchaser who pays all applicable sales taxes to a Colorado licensed vendor has no further tax liability regardless of whether the vendor remits the taxes to the Department.

Cross References

1. "Tangible personal property" is defined §39-26-102(15), C.R.S.

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

3. *The Price Company v. Department of Revenue*, District Court, 02CV7779 (July 31, 2003).

Regulation 39-26-104(1)(B)(I) EXCHANGED TANGIBLE PERSONAL PROPERTY

(1) **General Rule.** When taxable tangible personal property is received by a retailer as part or full payment for the sale of tangible personal property, sales tax shall be calculated upon the purchase price of the tangible personal property sold, minus the fair market value of the tangible personal property exchanged by the purchaser, provided the property taken by the retailer in the exchange is to be resold in the usual course of the retailer's trade or business. The general rule applies to exchanges that occur outside Colorado (e.g., motor vehicles exchanged in another state and one or both cars are subsequently registered in Colorado).

(2) **Exceptions**. The general rule does not apply if:

(a) The property transferred from purchaser, or by a third party on behalf of the purchaser, to seller is not tangible personal property.

(i) *Examples.*

(A) Intangible property, such as stock certificates, and real property are not subject to sales or use tax.

(B) Services (because they are not property).

(b) Retailer does not resell, in the usual course of its business, the property transferred from purchaser.

(i) *Examples.*

(A) Retailer does not resell the property in a commercially reasonable period.

(B) Retailer takes a used computer from buyer in exchange for the sale of a new computer to buyer. Retailer then donates the used computer to a school. A donation does not constitute a sale and, therefore, the initial exchange does not qualify under the general rule.

(C) Retailer is in the business of selling only construction equipment. Buyer exchanges a boat as partial payment of its purchase of a large compressor. Retailer cannot reduce the price on which sales tax is calculated for the compressor by the fair market value of the boat even if the seller resells the boat. The resale of boats is not part of the retailer's usual course of business. Retailer and buyer also do not qualify for the vehicle exchange, even though the boat qualifies as a vehicle, because both the buyer and retailer must exchange vehicles. Therefore, both the retailer, as a licensed vendor, and buyer are liable for the sales tax on the purchase of the equipment and the retailer, as a buyer, is liable for sales tax on the fair market value of the boat (buyer would also be liable for the sales tax on the boat if buyer is a licensed retailer).

(ii) *Exception - Vehicles.* The resale requirement does not apply if the property transferred (exchanged) by the seller to buyer is a vehicle and the property transferred (exchanged) by the buyer to the seller is a vehicle. Both vehicles must be subject to licensing, registration, or certification by the laws of Colorado. (See *Matthews v. State of Colorado* cited below). "Vehicles" include:

(A) Trailers, semi-trailers, trailer coach,

(B) Special mobile machinery (except such machinery used solely on property of the owner),

(C) Vehicles designed primarily to be operated or drawn on public highways, (§§42-3-103(1) and 104, C.R.S.),

(D) Watercraft (§33-13-103, C.R.S.),

(E) Aircraft (Colorado does not license aircraft but Colorado law requires aircraft possessed in this state be licensed by FAA) (§43-10-114(1), C.R.S.).

Purchaser, on whom the obligation to pay sales tax is levied, is the person who pays money or other consideration in addition to the exchanged vehicle. If the seller is a licensed retailer, then the retailer must collect sales tax from the buyer. Persons who engage in three or more such exchanges may be required to obtain a motor vehicle dealer's license

(c) Exchanges that do not occur at the same time and place. See, §39-26-104(1)(b).

(i) *Examples.*

(A) Motor vehicle dealer sells a motor vehicle to buyer, who pays cash. Two weeks later, buyer decides sells another vehicle he owns to the dealer. Buyer cannot claim a refund for taxes paid for the first purchase because the second vehicle was not exchanged as part of the first sale.

(B) Retailer is in the business of leasing equipment. Customer rents a forklift for 30 days and retailer and customer agree at the time the lease is

signed that customer will give retailer, as part of the payment, a used compressor that retailer intends to lease to third parties. The exchange does not qualify because the use of the forklift occurs over thirty days and does not occur at the same time and place as the exchange of the compressor. In contrast, a finance lease is treated as a credit sale and not as a true lease. An exchange involving a finance lease is treated as occurring at the same time and place as the other party's exchange of property.

Cross Reference(s):

1. For additional requirements regarding the collection of tax for motor vehicles, see §39-26-113, C.R.S.

2. See, §39-26-104(1)(b)(II)(B), C.R.S. and §12-6-101, et seq., C.R.S. for laws governing motor vehicle dealer licensing.

3. See, Matthews v. State of Colorado, Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977) for additional information on out-of-state registered vehicles.

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) [Repealed eff. 05/30/2014].

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

(1) **General Rule.** A retailer shall collect the state sales tax and any applicable state-administered local sales taxes in effect at the time of the sale. If the retailer’s filing period does not end on the day preceding the effective date of a new tax rate, the retailer must compute the amount of sales tax on its sales tax return using both tax rates.

(a) **Leases and Credit Sales.** Retailers who enter into leases or credit sales subject to Colorado sales or use taxes must collect for each such payment the tax at the rate in effect when the credit sale or lease was first made.

(i) Retailers who receive payments for a lease or credit sale after the effective date of a change in the tax rate must continue to collect the tax at the original rate. If the tax rate decreases and the retailer collects tax at the old rate on payments made after the effective date of the new tax rate, the retailer must report on their sales tax return the difference between the old tax rate and the new tax rate on the "Excess tax collected" line that is applicable to the tax jurisdiction whose tax rate has changed. Retailers cannot distribute the excess tax to the reporting columns of tax jurisdictions whose rate has not changed. If the tax rate increases and the retailer collects tax at the old rate on payments made after the effective date of the new tax rate, the retailer should contact the Department for instructions on filing the return.

(A) Retailers who renew or extend a lease must collect on each subsequent payment the tax rate in effect on the effective date of such renewal or extension.

(b) **Deferred Transactions.** Retailers who have conditional sales contracts or who remit tax on a cash basis for sales that occurred before a change in the tax rate must continue to collect the tax related to all payments made after the effective date of the new tax rate at the rate in effect at the time the contract or sale was originally made.

39-26-105(1)(B) EXTENSIONS OF SALES AND USE TAX RETURNS

(1) **General Rule.** The Department may grant an extension of time to file a sales or use tax return upon a showing of good cause.

(a) Taxpayer has the burden of demonstrating the factual and legal basis for granting the extension.

(b) The Department will consider a number of factors, including whether:

(i) filing on the deadline will create an undue hardship for the taxpayer;

(ii) taxpayer previously made requests for extensions of time;

(iii) the circumstances giving rise to the request for extension are not under taxpayer's control; and,

(iv) if the extension is based on taxpayer's neglect, the neglect was not willful or a reckless disregard of taxpayer's filing obligation.

(2) **Extension Request.** Taxpayer must generally file a request for an extension of time in writing in order to document that a request has been made. However, the Department may grant an extension without a written request if it is satisfied that good cause exists for an extension.

(a) The request must provide the name of the taxpayer, Department tax account number, and the date to which taxpayer is requesting an extension

(3) Granting an extension of time does not relieve taxpayer from interest charges, but granting an extension relieves taxpayer from penalty and penalty interest that would otherwise apply for filing a return after the due date.

(4) An extension of time applies only to the return described in the Department's approval.

(5) **Bulk close-out sale.** The deadline for a taxpayer to file a tax return for and to pay such sales or use taxes that arise from the sale of all or substantially all of a commercial entity or charitable organization's taxable property or services as part of a liquidation, merger, or reorganization of such entity or organization is automatically extended for four months. This automatic extension does not apply when the purchase prices for such taxable property or services are known at the time of sale, such as auction sales, inventory reduction or asset liquidation sales by retailers to the general public, and sales from an entity or organization to another entity or organization as part of a liquidation, merger, or reorganization who have agreed to the price(s) of such taxable property or services at the time of sale. The extension does not toll the accrual of interest after the original filing deadline. A taxpayer whose deadline for filing a tax return is automatically extended by this rule may request an additional extension of time pursuant to subparagraph (1), above.

Cross Reference(s):

1. For a mailing address and phone number to make an extension request, please see the Department's website at www.colorado.gov/revenue/tax.

2. For information on when extensions for filing all tax returns can be authorized, see Department Regulation 39-21-112(1).

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 cities and 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 the 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

(1) **Qualifications.**

(a) A sales tax licensee who had a Colorado state sales tax liability of more than seventy-five thousand dollars in the previous calendar year must remit all state and state-administered city, county, and special district sales taxes by electronic funds transfer for the following calendar year. State-administered local sales taxes paid by the licensee are not included in the calculation of the seventy-five thousand dollar threshold.

(b) The Department does not collect the sales taxes for home rule municipalities that collect and administer their own sales taxes.

(2) 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.

(3) If the vendor fails to pay taxes by electronic funds transfer or is delinquent in filing the tax return, any required schedules, or the payment of tax, 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. See, 39-26-105(1), C.R.S.

Cross Reference(s):

1. Necessary Forms, Department Publication DRP-5782, "Electronic Funds Transfer (EFT) Program for Tax Payments" describing the electronic funds transfer program, and Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax Payments," can be found at www.colorado.goc/revenue/tax > Forms > Forms by Number. These forms must be completed for authorization to use electronic funds transfer.

Regulation 26-106 SEPARATELY STATED SALES TAX / EXCESS TAX

(1) **General Rule.** A retailer must separately state the sales tax or retailer's use tax charged to the buyer. If the retailer issues buyer a receipt, invoice, or other document setting forth the purchase price, the retailer must separately state the tax on such document. If the retailer does not issue a document that sets forth the purchase price, then the retailer must disclose the tax of each item on signage clearly visible to the buyer.

(a) *Separately Stated*. Tax is separately stated if the amount of tax is disclosed on the customer's invoice, contract, or on signage clearly visible to buyer at the time of purchase. The amount of tax for each item must be separately stated as a dollar amount. It is not sufficient to state the tax rate on such invoice or other document. If more than one state-administered tax is charged to the buyer, retailer may either separately state each tax amount or state the total tax amount.

(b) This rule applies only to state-administered local jurisdictions, and does not apply to home rule cities and counties.

(c) *Example.*

(i) A retailer charges buyer state sales tax (2.9%), state-administered city sales tax (1%), state-administered county sales tax (.5%), and special district sales taxes sales tax (1%). The retailer lists the purchase price of the taxable good as $10. The retailer, as a business practice, does not generally provide an invoice to buyers, and, thus, must separately state on clearly visible signage to the buyer at the point of sale that the total dollar amount of the sale includes sales tax of $.51. The retailer must show the applicable tax for each specific item. Retailer cannot state the tax amount as a percentage. For example, a retailer cannot state on signage or on the invoice that the tax paid is a stated percentage (e.g., 5.4%).

(ii) A retailer that generally provides an invoice to buyers must separately state on the invoice each individual or the total sales tax due.

(2) **Exceptions.** The general rule does not apply to retailers who sell malt, vinous, or spirituous liquor by the drink and elect to include the tax in the price or retailers selling goods by coin-operated vending machines. Retailers who sell goods by vending machines that are not coin-operated (such as vending machines that exclusively accept credit card payments) are not exempted from the general rule and must provide an invoice separately stating the applicable sales tax. See, §39-26-106(2)(b), C.R.S.

(3) **Excess Tax.** Tax collected on sales of more than the minimum taxable amount will usually result in the collection of tax in excess of the tax rate. For example, the state sales tax on a purchase of $3.00 is $.087, but the retailer will collect $.09. Any excess tax collected during the month must be included in the total amount of the sales tax for which the retailer is required to account. If a retailer operates more than one store within Colorado, the retailer cannot offset any under collection of sales tax at a store against an over collection of sales tax at another store. In addition, a retailer cannot offset any under collection of sales tax in one month against an over collection of sales tax in another month. However, this excess tax collected as a result of rounding may offset the under collection of tax due to the sale of individual items priced at less than seventeen cents.

Cross Reference(s):

1. A retailer cannot directly or indirectly state that the tax, or part of the tax, will be assumed, absorbed, or refunded or that it will not be added to the purchase price. See, §39-26-108, C.R.S.

2. For additional information on the requirement of the vendor to pay sales tax on purchases of less than seventeen cents see Department Rule 39-26-105.

Regulation 26-106.2(a). [Repealed eff. 05/30/2014]

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 bat 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 the; 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 [Repealed eff. 03/03/2014]

Regulation 39-26-108 . ABSORPTION OF TAX [Repealed eff. 03/03/2014]

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) **Qualification Requirements.**

(a) The truck tractor or semitrailer must be model year 2010 or newer with a gross vehicle weight rating of fifty-four thousand pounds or greater, and must be purchased on or after July 1, 2011.

(i) *Exception*. If the truck tractor or semitrailer is registered in Colorado through the International Registration Plan (IRP), then the truck tractor or semitrailer is not eligible for this refund and is subject to the full amount of Colorado sales and use tax.

(2) **Refund Calculation.**

(a) 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%.)

(3) **Prioritization of Claims.**

(a) Claims will be eligible for issue based on the date they are received by the Department. 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 paragraph (5).

(4) **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 (3), above. Claims filed after the fund has been depleted will not receive a refund for that year, but may be 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 earlier purchase date will be used to determine which refund claims will be issued.

(5) **Leases.**

(a) A lease term must be for more than 3 years and must be entered into after July 1, 2011 to qualify for the refund. All leases entered into prior to July 1, 2011 are not eligible for this 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 paragraph (2).

(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, C.R.S.

(6) **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 transation. 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 39-26-118(1) SALES TAXES HELD IN TRUST

A retailer who collects sales taxes from another shall hold such funds in trust on behalf of the State of Colorado. The Department presumes that a retailer who uses recognized accounting practices to account for such trust funds has met its fiduciary obligations as a trustee of such funds.

Cross References:

1. Officers of a corporation and members of a partnership or limited liability company may be liable for penalties for willfully failing to collect, account for, or remit sales and retailer's use taxes, or for willfully attempting to evade the payment of or defeat such taxes. §39-21-116.5, C.R.S.

2. See Department Rule 39-26-106 regarding accounting for over and under-collected trust fund taxes.

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) STATE FISCAL YEAR [Repealed eff. 03/03/2014]

Regulation 39-26-502 SALES AND USE TAX REFUND FOR POLLUTION CONTROL EQUIPMENT [Repealed eff. 03/03/2014]

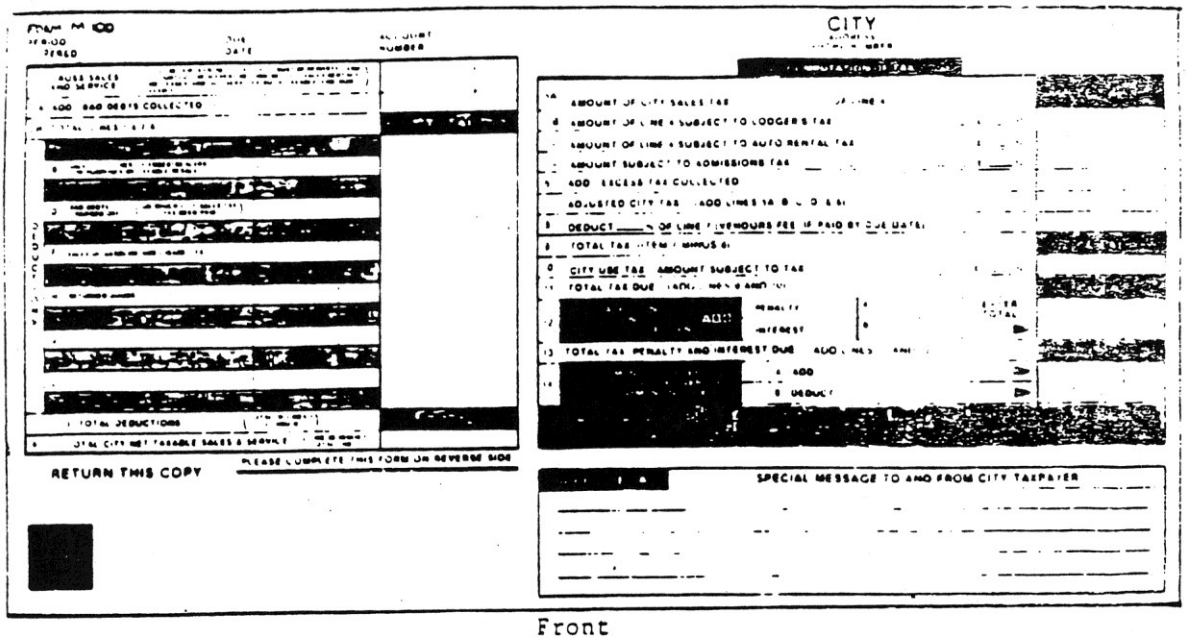
Regulation 39-26-601(3) STATE FISCAL YEAR [Repealed eff. 03/03/2014]

Regulation 39-26-602 SALES AND USE TAX REFUND FOR STATE SALES OR USE TAX PAID ON RESEARCH AND DEVELOPMENT PROPERTY [Repealed eff. 03/03/2014]

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.

Form M 100



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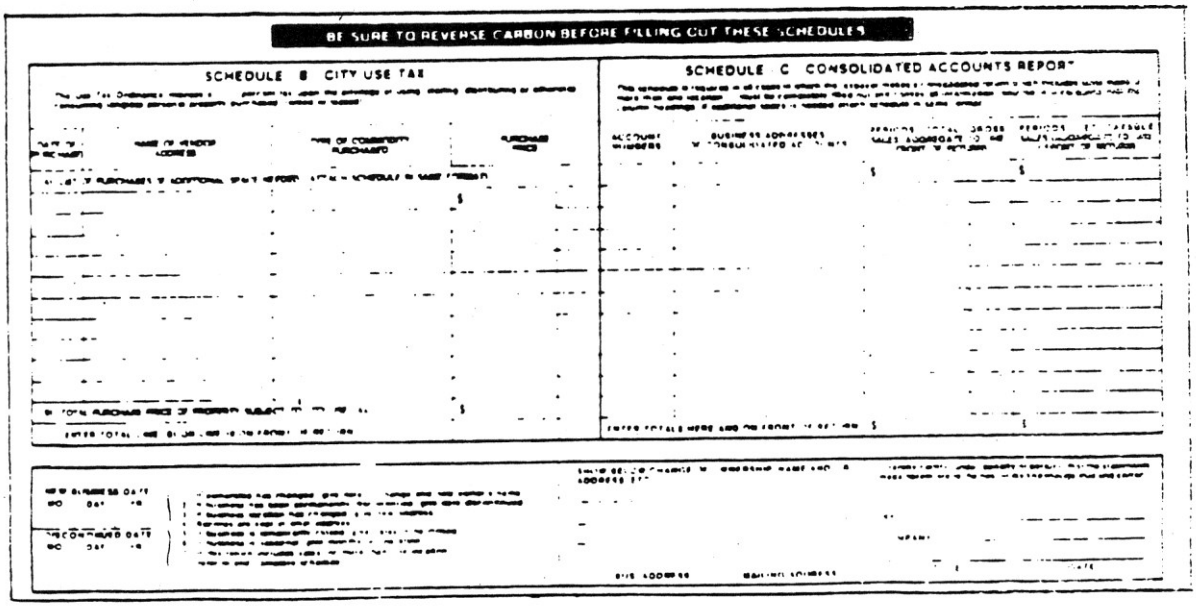

Regulation 39-26-703.1

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) [Repealed eff. 05/30/2014]

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 [Repealed eff. 05/30/2014]

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) [Repealed eff. 05/30/2014]

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) [Repealed eff. 05/30/2014]

Regulation 39-26-716.4(c) [Repealed eff. 05/30/2014]

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 CHARITABLE AND OTHER EXEMPT ORGANIZATIONS

(1) **General Rule.**

(a) Purchases by charitable organizations are exempt from state sales and use taxes and state-administered local sales and use taxes if the purchases are part of the charitable organization’s regular charitable functions and activities.

(b) Sales by charitable organizations generally are not exempt from sales tax, except for occasional sales, sales where a portion of the purchase price is a donation, and sales by certain school-related entities.

(c) The following are common situations where the acquisition of property by a charitable organization is not subject to sales tax.

(i) The charitable organization does not pay the donor for the donation (sales tax does not apply to transactions when consideration is not paid), or

(ii) The purchase was part of its regular charitable function and activity, or

(iii) The purchase was made with the intention of reselling the item at a fundraising event, in which case the charitable organization's purchase is exempt as a wholesale purchase for resale.

(2) **Types of Charitable Organizations.**

(a) Charitable organizations must operate exclusively for one or more of the following purposes or functions:

(i) Religious;

(ii) Charitable;

(iii) Scientific;

(iv) Literary;

(v) Educational;

(vi) Testing for public safety;

(vii) Fostering national or international amateur sports competition, as long as no part of its activities involves providing athletic facilities or equipment;

(viii) Preventing cruelty to children or animals; or

(ix) Sponsoring a special event, meeting or other function in the State of Colorado by any veterans' organization registered under section 501(c)(19) of the Internal Revenue Code, so long as such event, meeting or function is not part of such organization's regular activities in the state.

(b) *IRS 501(c)(3) Certificates.* A charitable organization that holds a 501(c)(3) determination letter from the Internal Revenue Service is provisionally presumed to qualify as a charitable organization that is exempt from Colorado sales and use tax. However, the Department is not bound by an IRS determination of an organization's charitable status, and the Department may independently evaluate whether the entity qualifies as a charitable entity.

(c) *Religious Organization.* The IRS does not require religious organizations, such as churches or synagogues, to apply for a 501(c)(3) certificate in order to qualify as a tax-exempt charitable organization. In such cases, the Department will issue a sales tax exemption certificate to a religious charitable entity, even in absence of an 501(c)(3) certificate, if the organization has a religious purpose and meets the conditions set forth

below. In lieu of the 501(c)(3) certificate, a religious organization shall provide to the Department a copy of its IRS No Record of Exempt Organization letter and Department Form DR 0716, “Statement of Nonprofit Church, Synagogue, or Organization”.

(i) If the applicant is a religious organization that is an affiliate of a national organization that holds a Colorado exemption certificate, applicant may submit, in lieu of such a determination letter, documentation from the national organization demonstrating that applicant is an affiliate of such organization.

(d) *Nonprofit Organizations.* An organization that is a nonprofit or an organization that performs some charitable services or provides funding to a qualified charitable organization does not automatically qualify as a charitable organization for sales and use tax purposes. In order to qualify, the organization must be established and operated exclusively for one or more of the charitable purposes listed above. Examples of organizations that do not typically qualify as a charitable organization for purposes of this exemption are nonprofit country clubs, private clubs, employees or social clubs or organizations, nonprofit recreational organizations, lodges, patriotic organizations (veteran organizations have a limited exemption, discussed below), fraternities, sororities, professional and trade associations, civic organizations, labor unions, political organizations, and other nonprofit entities.

(3) **Application for Exemption Certificates.**

(a) Applicants must submit a completed application for a sales tax exemption certificate and include a copy of the organization's federal 501(c)(3) determination.

(b) Notwithstanding a determination by the IRS of an applicant’s charitable status, the Department may conduct, either before or after the issuance of an exemption certificate, an independent review of whether the organization qualifies as a charitable organization.

(4) Restrictions on Charitable Organization Activities.

(a) *Exclusively.* An organization will be regarded as operating exclusively for one or more exempt purpose only if the organization exclusively engages in activities in furtherance of its exempt purpose. A charitable organization will not lose its exempt charitable status if its non-charitable activities are insubstantial.

(i) *Examples.*

(A) A religious bookstore operated by and located in a church, synagogue, or other place of worship that is marketed exclusively to its members or to visitors of the religious establishment is considered part of the regular function and activities of the organization’s charitable purpose. However, if the religious organization operates a restaurant or coffee shop for the public unrelated to its charitable propose, then the organization does not qualify for the exemption because this activity is not considered part of the organization’s charitable function. Note that sales by a charitable organization are not generally exempt from sales tax. For example, sales by a church in a coffee shop operated on church property are subject to sales tax even if the revenues from such sales are insubstantial, unless the sales qualify under the occasional sale exemption or the donation exemption, discussed below.

(B) Providing meals to the poor or homeless for free or below cost is generally considered a charitable activity.

(b) *Other Restrictions.* A charitable organization is subject to the following limitations in order to qualify for the sales and use tax exemption certificate:

(i) No part of an organization's net earnings can benefit any private shareholder or individual.

(A) For example, a mutual benefit society is an organization whose benefits are available only to its members and/or their beneficiaries and requires payment by its members as a condition to receiving such benefits. A mutual benefit society is not organized for a charitable purpose, and is not a charitable organization exempt from sales and use taxes under this exemption.

(ii) No substantial part of an organization's activities can be carrying-on propaganda or otherwise attempting to influence legislation. For example, an organization whose main activity is scientific is not a charitable organization for sales and use tax purposes if a substantial portion of the organization's activities involves dissemination of propaganda that is favorable to its political objectives or consists of lobbying for legislation that supports the organization's activities and mission.

(iii) An organization may not participate in, or intervene in, a political campaign on behalf of any candidate for public office (including the publishing or distributing of statements).

(5) **Purchases by Charitable Organizations.**

(a) Purchases by charitable organizations are exempt from sales and use taxes if the goods or services are used exclusively in the conduct of the charitable organization's regular charitable functions and activities. Purchases must be made directly from the organization's funds and, for purchases over one-hundred dollars, must be made with a check or credit card issued in the organization's name. Purchases made with funds other than the organization's own funds or purchases made with a charitable organization's funds but reimbursed by someone who is not a qualified charitable organization are not exempt from sales or use tax. Whenever a charitable organization purchases tangible personal property (such as cards, food, cars, religious articles, etc.) that 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 (but not including a sale), 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 Department by the organization.

(i) *Examples.*

(A) A purchase made on behalf of a charitable organization with a credit card issued in the name of an individual is not exempt.

(B) An educational charitable organization's purchase of computers is not exempt if the computers are given to members of the organization who use the computers for their own personal use or who reimburse the organization.

(C) An educational institution's purchase of athletic equipment or uniforms is not exempt from sales and use tax if the educational institution is reimbursed for the equipment or uniforms from students or their families.

(b) *Veterans' Organizations.* Purchases by veterans' organizations that are registered under section 501(c)(19) of the Internal Revenue Code are exempt only if the goods are used for a special event, meeting, or other function that is not part of the organization's regular activities in Colorado. The Department does not issue an exemption certificate to veterans' organizations. Instead, veterans' organizations must apply for a special event license for each special event or function. Veterans' organizations make exempt purchases by presenting the special events license to the vendor. Sales by veterans' organizations are not exempt from sales tax.

(6) **Donor's Obligation for Sales and Use Tax.**

(a) A donor who purchases tangible personal property for the purpose of donating it to a charity must pay sales or use tax on the purchase and cannot claim the charitable organization's exemption. The donor cannot claim a sale for resale exemption because the property is donated, not resold, to the charitable organization.

(b) A retailer who initially makes a wholesale (exempt) purchase of an item for resale (e.g., retailer buys an item for its inventory it plans to resale) and later withdraws that item from inventory and donates it to a charitable organization incurs use tax on the withdrawal from inventory. However, see the cross reference (5) for information on the exemption for donations of manufactured goods by manufacturers.

(7) **Sales by Charitable Organization.**

(a) *General Rule.* Sales made by charitable organizations are generally subject to sales tax, unless the sale qualifies for the occasional sale exemption, as a donation, or any other exemption that may apply. For that reason, a charitable organization that 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. For example, a charitable organization that operates a gift or book shop, rummage store, or coffee shop must collect sales tax on sales. 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.

(b) *Occasional Sale Exemption.* Occasional sales of taxable tangible personal property by a charitable organization that holds a Colorado exemption certificate are exempt from sales and use taxes. An occasional sale must meet the following criteria:

(i) The charitable organization conducts sales for a total of twelve days or less during a calendar year, and

(A) Each day a sale occurs is counted as an entire day, even if the sale occurs for less than a full day or the organization characterizes a multi-day sale as one event.

(ii) The "net proceeds" from all these events do not exceed twenty-five thousand dollars in that calendar year. "Net proceeds" means the total gross receipt(s) minus expenses directly attributable to the event(s).

(A) "Directly attributable" generally means those expenses that would not have arisen but for the occurrence of the event and do not include indirect and overhead costs, such as administrative staff wages, insurance unless purchased for the specific event, rent otherwise due even if no event was held, property taxes, and other expenses that would be incurred even in the absence of the event.

(B) Payment by the charitable organization to acquire any goods that are later sold at a fundraising event is an expense that is deducted from the gross proceeds to determine net proceeds.

(C) When a charitable organization exceeds either threshold described in paragraph (7)(b)(i)or (ii), then all sales that occur in that calendar year are subject to tax, including sales in that calendar year that were previously exempt prior to the date when the threshold was exceeded. Sales tax applies to the gross proceeds, not the net proceeds. The charitable organization must have a sales tax license if and when either of these limits is exceeded.

(I) *Example 1.* Charitable organization conducts one auction sale which generates $30,000 in gross proceeds and $20,000 in net proceeds. Because neither threshold was exceeded, the charitable organization does not collect, report, or remit sales tax.

(II) *Example 2.* Same facts as Example No. 1, but net proceeds are $26,000. Charitable organization has exceeded the $25,000 threshold, and, therefore, must collect, report, and remit sales tax on the gross proceeds of $30,000.

(iii) The funds retained by the charitable organization are used in the course of the organization's charitable service.

(iv) *Living accommodations and other taxable services*. The exemption for occasional sales applies only to the sale of tangible personal property. Therefore, sales of taxable services by a charitable organization are subject to tax. For example, a charitable organization conducts a silent auction at which it auctions a weekend rental of a timeshare or hotel room. The sale of living accommodations is a sale of a service. The sale is subject to state and local sales taxes applicable to where the accommodation is located even if the charitable organization has not exceeded the twelve day or twenty-five thousand dollar thresholds. The sale of the living accommodation is not included in the calculation of the twenty-five thousand dollar threshold.

(A) If the auction is not conducted in the same state-administered local jurisdiction in which the living accommodation is located, then the charitable organization must register with the Department for the local jurisdiction where the accommodation is located and collect the local sales taxes, including any lodging or local marketing district taxes, applicable to the rental of living accommodations.

(v) *Goods sold on consignment.* Goods given by a retailer to a charitable organization for sale at a fundraising event with the understanding that the goods will be offered for sale at a minimum price and the minimum price is paid to the retailer, and with the further understanding that the goods would be returned to the retailer if not sold at the event are subject to sales tax on the minimum price even if the twenty-five thousand dollar threshold is not met. For example, a bike shop offers a bike to a charitable organization to be sold at a fundraising auction, but the bike shop requires the charitable organization to pay the bike shop a portion of the purchase price in the event the bike is sold. The charitable organization must collect sales tax from the successful bidder for the payment made to the bike shop, even if the net proceeds from the event do not exceed the twenty-five thousand dollar threshold.

(vi) *State-Administered Local Tax Jurisdictions.* State-administered cities and counties have the option to levy sales tax on occasional sales by charitable organizations. See, §29-2-105(1)(d)(I)(E), C.R.S. However, state-administered special districts, such as the Regional Transportation District, do not have the option to levy sales tax on occasional sales by charitable organizations. Charitable organizations are responsible for collecting state-administered city and county sales taxes for the local jurisdiction in which the sale occurs. If the state-administered city or county elects to tax occasional sales, then the charitable organization must obtain a Colorado sales tax license prior to such sales so that the organization can report and remit the local sales tax to the Department, even though these sales are exempt from Colorado state sales tax. Note that purchases by charitable organizations discussed in paragraph (5) must be exempted by state-administered local tax jurisdictions. Home rule cities are not governed by these rules and procedures and should be contacted directly for more information on their procedures.

(c) *Donations.* A portion of the purchase price for a sale made by a charitable organization may be a donation if the amount paid exceeds the fair market value of the good purchased.

(i) The exclusion of donations from the tax base applies even if the charitable organization exceeds the twelve day / twenty-five thousand dollar threshold of the occasional sale exemption. This rule also applies to state-administered local sales taxes even if the local tax jurisdiction elected to tax occasional sales of charitable organizations.

(ii) The donation amount is not included in the calculation of the twenty-five thousand dollar net proceeds threshold for the occasional sale exemption.

(iii) *Examples.*

(A) An electronic retailer donates a laptop computer that it sells for $700 at retail. The charitable organization offers the laptop computer at a silent auction and discloses that the fair market value of the laptop computer is $700. The winning bid is $1,000. $300 is a donation not subject to tax.

(B) Charitable organization sells 300 tickets for $100 for a dinner and silent auction event. This is the charitable organization's only event that calendar year. Organization discloses to ticket purchasers that $75 of the $100 ticket price is a donation. Each dinner costs the charitable organization $10. Charitable organization generates $33,000 in silent auction gross sale proceeds ($30,000 derived from the auction of taxable tangible personal property, $1,000 from the auction of non-taxable services and gift certificates, and $2,000 from the auction of taxable vacation rentals), $20,000 in net proceeds from the silent auction, and $4,500 from the sale of dinner (($25-$10) X 300), for a total in net proceeds of $24,500. Because the $75 is a donation and not proceeds from a sale of what would otherwise be taxable goods, the $22,500 ($75 X 300) in donations from ticket sales is not added to the $24,500 in net proceeds to determine whether the $25,000 in net proceeds threshold is exceeded. Sales tax is not due on the net proceeds because the charity has not exceeded the $25,000 threshold. The $1,000 in non-taxable services and gift certificates and the $2,000 in taxable living accommodations are excluded from the net proceeds calculations because the services and gift certificates are not taxable and the living accommodations do not qualify under the occasional sales exemption,

which applies only to taxable tangible personal property and not taxable services. (Tax must be collected on the living accommodations.)

(I) *Local Sales Taxes*. If the state-administered local tax jurisdiction in which the sale occurred elected not to exempt occasional sales by charitable organizations, then the local tax applies to the gross proceeds from the sale of dinner and auction items, even if the organization did not exceed the $25,000 net proceeds threshold, but local tax does not apply to the $75 per ticket because a donation is not subject to state or local sales taxes.

(C) Same facts as Example No. 2, except the net proceeds from the auction sale are $23,000. Because the net proceeds threshold is exceeded ($23,000+$4,500), sale tax applies to the gross price, not just the net proceeds, for all dinners ($25 X 300) and to the gross price all of the sales at auction ($30,000 + $2,000). Sales tax is not collected on the $1,000 in the sales of non-taxable services and gift cards and not on the $22,500 in donations.

(iv) In order to claim a sales tax exemption for a donation included in the buyer's purchase price, the buyer and charitable organization must establish the following:

(A) the fair market value of the taxable item or service, and

(B) that the buyer knowingly paid in excess of the fair market value with the intent to donate that excess portion of the price to the charitable organization.

(v) The Department will presume that the price paid for an item sold at auction is the item's fair market value and that the buyer did not knowingly pay in excess of the fair market value. These presumptions can be rebutted by reasonable evidence, such as the price for comparable goods sold by a retailer in its regular course of business and that buyer knew the fair market value of the goods at the time of the purchase. For example, the fair market value of a signed professional sports jersey sold at auction will be presumed to be the price paid by the successful bidder, but the presumption can be rebutted by documentation of the sales price of a comparable signed jersey sold to the public at the professional team's or other retail store.

(A) *Examples.*

(I) A charitable organization holds a fundraising dinner for which patrons purchase a ticket for $100 per person. The organization compiles information that establishes that the fair market value of the dinner is $25 and the cost per meal is $10. The organization establishes that purchasers knowingly paid in excess of the fair market value of the item by disclosing to patrons, at the time tickets are sold, that the fair market value of the dinner is $25 (or that $75 of the $100 purchase price is a donation). State sales tax is due on the $25 if the organization exceeded the $25,000 net proceeds threshold.

(II) The fair market value of an item sold at auction is not based on the cost to the organization to acquire the item. For example, a

donor may donate a set of golf clubs or a night stay at a condominium to the organization to be auctioned at a fundraising event. The fair market value of the golf clubs or room is not zero even though the organization acquired the golf clubs or room for free. The fair market value is the price at which the item would sell on the open market.

(III) A charitable organization holds a fundraising auction. The organization previously conducted concession sales and other fundraising sales for twelve days in the same year. The organization compiles information of the fair market value of each of the items sold at auction. The organization establishes that the purchaser knowingly paid in excess of the fair market value of the item by disclosing the fair market value of the auctioned items to potential bidders prior to bidding. The organization does not collect sales tax on that portion of the purchase price that exceeds the fair market value.

(vi) The Department will presume that any donation that qualifies as a donation for federal income tax purposes also qualifies as a donation for sales tax purposes.

(8) **Parent-Teacher Associations.** Sales by associations or organizations of parents and teachers of public school students are exempt from sales tax if:

(a) The association or organization is a charitable organization, and;

(b) The sale proceeds are used for the benefit of a public school, an organized public school activity, or to pay reasonable expenses of the association or organization.

(c) The exemption does not apply to sales by private schools. However, sales by private schools that qualify as charitable organizations are exempt as occasional sales or are not taxable to the extent the purchase price is a donation, or are exempt pursuant to paragraph 9, below. §39-26-718(c), C.R.S.

(d) *Occasional Sales Restrictions Do Not Apply*. This exemption applies even if the sale has exceeded the occasional sale exemption threshold (twelve days / twenty-five thousand dollar as discussed in (7)(b) “Occasional Sale Exemption”). This exemption applies to state-administered local sales taxes even if the local tax jurisdiction elects to tax occasional sales of charitable organizations. See, §29-2-105(1)(d)(I)(E), C.R.S.

(i) *Example.* A public school parent-teacher association can raise funds by selling candy exempt from sales tax in order to purchase school sports uniforms. However, if the parent-teacher association is supporting a private school, its sales are taxable, unless the association is a charitable organization for educational purposes. In addition, if students reimburse the school for the uniforms, then tax must be collected on the amount paid by students.

(9) **Sales by Public, Private Schools and Supporting Organizations.** Sales by public and private schools and supporting organizations are exempt from sales tax if the conditions described in paragraphs (a) to (d) are met.

(a) The school is for students in kindergarten through twelfth grade.

(b) Preschools, trade schools and post-secondary schools do not qualify.

(c) The sale is made by any of the following:

(i) the school;

(ii) an association or organization of parents and school teachers;

(iii) booster club or other club, group or organization whose primarily business is to support a school activity; or

(iv) a school class, student club, group or organization.

These organizations qualify for this exemption even if they are not charitable organizations. Examples include: concession sales by booster club or a silent auction sales conducted by a parent-teacher association or school are exempt if all the proceeds are donated to the school or school-approved student organization

(d) All the proceeds from the sale, except the actual cost incurred by a person or entity to acquire the good or service sold, must be donated to the school or school-approved student organization. Actual costs incurred to acquire the goods or services include, payment facility charges (rent for space, furniture or equipment), labor (wages for security, independent contractors, employees), transportation, meals, insurance, and other costs.

(e) Sales by a parent-teacher association that are not exempt under this paragraph (9) may, nevertheless, be as exempt if the sale meets the requirements for an exempt sale as a charitable organization or as a public school parent-teacher association or organization.

(f) *Occasional Sales Restrictions do not apply*. This exemption applies even if the sale has exceeded the thresholds for the occasional sale exemption (twelve days / twenty-five thousand dollar as discussed in (7)(b) "Occasional Sale Exemption,"). This exemption applies to state-administered local sales taxes even if the local tax jurisdiction elects to tax occasional sales of charitable organizations. See, §29-2-105(1)(d)(I)(E), C.R.S.

(g) Purchases by public schools are exempt from sales tax. §39-26-704(4), C.R.S. Purchases by private schools are not exempt unless the private school is a charitable organization.

(10) **Other Tax Exempt Organizations.** Other tax-exempt organizations (including governmental entities) that sell tangible personal property (for example, through a secondhand goods retail store, a fundraiser sales event or routine sales of organization-related items) must obtain a sales tax license and collect all applicable state and local sales taxes.

Cross Reference(s):

1. For information on how to document sales to tax exempt organizations, see FYI Sales 1, "How to Document Sales to Tax Exempt Organizations" available at www.colorado.gov/revenue/tax > Tax Library > FYI Publications > Sales> FYI Sales 1.

2. For information about local sales taxes, see FYI Sales 62, "Guidelines for Determining When to Collect State-Collected Local Sales Tax" available at www.colorado.gov/revenue/tax > Tax Library > FYI Publications > Sales> FYI Sales 62.

3. For a list of state-administered local tax jurisdictions that levy sales tax on occasional sales, see Department publication "Colorado Sales/Use Tax Rates" (DR 1002), available at www.colorado.gov/revenue/tax > Forms > Forms by Number > DR 1002.

4. For a list of home rule cities, see also Department publication “Colorado Sales/Use Tax Rates” (DR 1002).

5. For information on the exemption for donations of manufactured goods by manufacturers, see §39-26-705(2), C.R.S.

6. For additional information on sales related to schools, see §39-26-725, C.R.S.

7. For information on out-of-state sales tax exempt organizations, see FYI Sales 3, Out-of-State Sales Tax-Exempt Organizations Doing Business in Colorado available at www.colorado.gov/revenue/tax > Tax Library > FYI Publications > Sales> FYI Sales 3.

8. For additional information on the sales tax exemption for school related items, please see FYI Sales 86, Sales Tax Exemption on School Related Items available at www.colorado.gov/revenue/tax > Tax Library > FYI Publications > Sales> FYI Sales 86.

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.

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.

Regulations 39-26-102(1.3), 39-26-104(1)(A), 39-26-105(1)(B), 39-26-105.5, 39-26-118(1) eff. 03/03/2014. Regulations 39-26-102.16, 39-26-106.3, 39-26-108, 39-26-501(3), 39-26-502, 39-26-601(3), 39-26-602 repealed eff. 03/03/2014.

Regulations 39-26-102.17, 39-26-103.5, 39-26-104(1)(B)(I), 39-26-105(1)(A), 39-26-106, 39-26-113.5, 39-26-718 eff. 05/30/2014. Regulations 39-26-102.2.5, 39-26-102.7(b), 39-26-103.5.6, 39-26-104.1(b)(I)(B), 39-26-106.2(a), 39-26-708.2(b), 39-26-709.2, 39-26-715.2(b), 39-26-716.4(b) – (c) repealed eff. 05/30/2014.

Regulation 39-26-105(1)(B) eff. 07/15/2014.

Annotation

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