

CITY OF COLORADO SPRINGS TAX GUIDE

REFUND OF TAXES TO QUALIFYING ENTITIES FOR THE PURCHASE OF CONSTRUCTION MATERIALS

Scope: This Tax Guide specifies the conditions under which the Director will approve an application for a refund of City taxes paid on the purchase price paid for construction materials used by qualifying entities. If the conditions are met, the transactions will be deemed to be “direct sales to and direct purchases by” a qualified entity for purposes of the Sales and Use Tax Code even though the funds for the purchases were not transferred directly from the qualified entity to the retail vendor. Taxes paid for the purchase of construction materials, but not for the purchase of any other tangible personal property, are within the scope of this Tax Guide. “Qualified entity” means a religious, charitable and eleemosynary organization; the United States government, the State of Colorado, its departments or institutions, and political subdivisions in their governmental capacity; and a school (other than a school held or conducted for private or corporate profit) in the conduct of its educational functions and activities.

This Tax Guide does not address purchases by a contractor from a vendor under § 2.7.604 of the City of Colorado Springs Sales and Use Tax Code (Code).¹ The contractor must pay the City tax on those purchases unless the purchases are otherwise exempt as provided in the Code.

Authority: This Tax Guide is issued under § 2.7.901.A, which vests the Director with authority to administer the Code.

Discussion: Sections 2.7.404, 2.7.418, and 2.7.437 provide that “direct sales to and direct purchases by” a qualified entity are exempt from sales and use tax. Under § 2.7.104, “purchase or sale” means the “acquisition for any consideration by any person of tangible personal property or taxable services ...”² The Director has construed the term “direct sales to and direct purchases by” to mean transactions in which a qualified entity makes purchases using funds that are directly traceable to the qualified entity. Generally, a purchase is directly traceable to the qualified entity only if the purchase is made by a check drawn on an account of the qualified entity or by a charge or credit card issued to the qualified entity. Except as specified below, the Director will continue to follow this general rule. As a result, purchases of tangible personal property by a qualified entity not made using funds that are directly traceable to the qualified entity will continue to be taxable transactions, and the exemptions provided in sections 2.7.404, 2.7.418, or 2.7.437 will not apply.

¹ Unless otherwise indicated, all references are to the Code.

² “Person” is defined at § 2.7.104 of the Code.

The Director has determined that the general rule assures compliance with the Code. The Director has also determined that compliance with the Code can be assured in most instances when construction materials, as defined in § 2.7.104,³ are purchased if certain conditions are met. For this reason, the Director will grant a refund to a qualified entity for City taxes paid on the purchase price for the purchase of construction materials if certain conditions are met.

A qualified entity that applies for a refund of City taxes paid by a contractor or a subcontractor for the purchase of construction materials will be granted a refund to the extent that all of the following conditions are met:

1. The application for a refund complies with § 2.7.810 and is on forms prescribed and furnished by the Director.
2. The qualified entity, other than one described in § 2.7.418, is in good standing with the Colorado Secretary of State during the period beginning with the date of the purchase and ending on the date the application for a refund is filed.
3. On the date of purchase, the qualified entity, other than one described in § 2.7.418, (i) held a current letter of exemption from the City and (ii) was classified by the Internal Revenue Service for exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code.
4. The construction materials were incorporated into a completed structure under a contract entered into between the qualified entity and a person who is licensed as a contractor by the Pikes Peak Regional Building Department.
5. City sales or use tax was paid on the purchase price.
6. The qualified entity provides, on a form approved by the Director and signed by the contractor or subcontractor, as appropriate, a statement that the contractor has not claimed (whether to the vendor or the City), and will not claim, that the transaction is exempt from City tax.
7. The qualified entity provides an assignment by the contractor or subcontractor, as appropriate, to the qualified entity of all rights the contractor or subcontractor, as appropriate, has, or may have, to any refund of City taxes paid.

³ The definition of “construction materials” excludes any materials that are not an integral or inseparable part of a completed structure or project. However, solely for purposes of this Tax Guide, materials that are affixed to the structure will be considered to be an integral or inseparable part of a completed structure or project, and a refund will not be denied for those materials solely on the basis that they may not fall within the definition.

8. The qualified entity provides all supporting documents requested by the Director, including documents relating to the transaction between the contractor and the vendor.
9. The Director determines that the facts adequately support the claim for a refund.

Generally, a claim for refund cannot be substantiated unless the qualified entity submits documents prepared by, or for, the contractor, including, but not limited to, invoices, purchase orders, job cost detail reports, and use tax detail reports. Any transaction in which State taxes are not paid, regardless of whether an “89 certificate” issued by the State was presented, will receive additional scrutiny to assure that the vendor collected the City tax. The Director may reject any document showing purchases unrelated to construction materials for the qualified entity seeking the refund. The qualified entity is advised to assure that the contractor does not commingle purchases on behalf of the qualified entity with purchases for other persons.

Section 2.7.810.B.2 provides that the applicant for a refund bears the burden of proof. The failure of the qualified entity to satisfy this burden will result in the denial, or partial denial, of the claim for refund.

Repeal or Amendment: This Tax Guide is subject to repeal or amendment.

Effective Date: March 1, 2012.