

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-102(1.3). Auctioneers.

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(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-optimal fee that only successful bidders must pay in order to purchase taxable goods or services, even if the non-optimal 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.* Auctioneers must collect any applicable state-administered local sales taxes. For motor vehicles sold at auction, an auctioneer, who is required to collect sales tax (see paragraph (2)(b), below), must collect any applicable state-administered local sales taxes, unless the motor vehicle is exempted from such local sales tax by § 29-2-105(1)(e), C.R.S.

(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.

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Deleted: The location where the auction sale is conducted determines what, if any, state-administered local sales taxes apply, except as otherwise noted below.

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Deleted: jurisdictions in which the location of the sale and the location where the motor vehicle will be registered are the same.

Deleted: (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.¶

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 ~~Rule 39-26-716.4(a), 1 CCR 201-4~~ regarding an auctioneer's duties for an exempt farm close-out sale.
3. See ~~Regulation 39-26-718, 1 CCR 201-4~~ 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.
5. ~~See Rule 39-26-102.9, 1 CCR 201-4 for the sourcing of sales for state and local sales tax purposes.~~

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DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-102(9). Retail Sales.

Basis and Purpose. The bases for this rule are §§ 29-2-105(1)(b), 39-21-112(1), 39-26-102(9), 39-26-102(10), 39-26-104, 39-26-107, 39-26-204(2), and 39-26-713, C.R.S. The purpose of this rule is to establish the location to which a retail sale is sourced within Colorado.

- (1) "Retail sale" includes all sales on which sales tax is imposed under § 39-26-104, C.R.S.
- (2) A retail sale is a sale to the user or consumer of tangible personal property or service whether the sale is made by a licensed vendor or is between private parties.
- (3) "Retail sale" includes only those sales made within Colorado. For purposes of determining whether a sale of tangible personal property or services, other than leases or rentals controlled by subparagraphs (4), (5), or (6) below, and sales of mobile telecommunications services under §39-26-104(1)(c), C.R.S., is made within Colorado, the following rules apply:
 - (a) When tangible personal property or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 - (b) When tangible personal property or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), if that location is known to the seller.
 - (c) When subparagraphs (3)(a) and (3)(b) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
 - (d) When subparagraphs (3)(a) through (3)(c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
 - (e) When subparagraphs (3)(a) through (3)(d) do not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped.
 - (f) For the purpose of applying subparagraphs (3)(a) through (3)(e), the terms "receive" and "receipt" mean:
 - (i) Taking possession of tangible personal property; and

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Deleted: 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.

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(ii) Making first use of services; but not

(iii) Possession by a shipping company on behalf of the purchaser.

(4) The lease or rental of tangible personal property, other than property identified in subparagraphs (5) or (6) shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subparagraph (3) of this rule. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subparagraph (3) of this rule.

(c) This subparagraph does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(5) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subparagraph (6), shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The location shall not be altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subparagraph (3).

(c) This subparagraph does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated bases, or on the acquisition of property for lease.

(6) The retail sale, including the lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subparagraph (3), notwithstanding the exclusion of lease or rental in subparagraph (3). "Transportation equipment" means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(b) Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

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- (ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
- (c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
- (d) Containers designed for use on and component parts attached or secured on the items set forth in subparagraphs (6)(a) through (6)(c).

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DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-103.5. Direct Payment Permit.

(1) **General Rule.** A purchaser who holds a direct payment permit ("Qualified Purchaser") 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 Purchaser shall not collect sales tax from such purchasers.

(2) **Qualified Purchaser 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, commodities or tangible personal property that are to be erected upon or affixed to real property, such as building and construction materials and fixtures, are not included in the dollar threshold. See, §39-26-103.5(1)(a), C.R.S.

(b) *Good Standing.* If an applicant has been subject to any tax administered by the Department for at least three years prior to the date of the application, 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. If an applicant has not been subject to any tax administered by the Department for at least three years, the applicant cannot have been delinquent in collecting, remitting, or reporting taxes for any period after 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

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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 and 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 Purchaser 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 Purchaser 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 unless sooner revoked.
- (4) **Purchaser's Funds.** When a Qualified Purchaser uses a direct payment permit, the Qualified Purchaser 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 Purchaser, 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 Purchaser is making a purchase with funds other than the Qualified Purchaser'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 Purchaser violates any statute or rule governing the administration of sales and use taxes, or if in the opinion of the Department the Qualified Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser'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 Purchaser 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 Purchaser purchased such goods or services without a direct payment permit.
 - (i) *Exceptions.* A Qualified Purchaser 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 Purchaser and remit them to the Department. See, §30-11-107.5 and §30-11-107.7, C.R.S.
- (b) A Qualified Purchaser must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Purchaser purchases taxable goods or services with a direct payment permit.
- (c) The vendor must retain a copy of Qualified Purchaser's direct pay permit.

Cross References

- 1. See Rule 39-26-102.9, 1 CCR 201-4 for the sourcing of sales for state and local sales tax purposes.

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- (7) Determining Local Sales Taxes.¶
 - (a) *Service fees.* With regard to sales taxes only, a Qualified Purchaser 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 Purchaser takes title or possession of the good(s) or where a taxable service is performed.¶
 - (c) If the Qualified Purchaser takes title or delivery of any taxable good(s) within the State of Colorado, then the Qualified Purchaser shall remit the state-administered local sales taxes for the local jurisdiction(s) in which the Qualified Purchaser took the title or delivery.¶
 - (d) If the Qualified Purchaser takes title or delivery of any taxable good(s) outside the State of Colorado, then the Qualified Purchaser shall remit use tax for the location where the Qualified Purchaser 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 Purchaser 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 Purchaser remits state sales tax and RTD/CD sales taxes to the Department because purchaser took possession in these state-administered local tax jurisdictions. Qualified Purchaser 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 Purchaser which is located in that portion of El Paso County that also includes the Pikes Peak Rural Transportation Authority. Qualified Purchaser does not remit Arapahoe County or RTD/CD special districts sales taxes because the sale does not occur in those local tax jurisdictions. Qualified Purchaser 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 Purchaser 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 Purchaser's agent and the sale occurs in the local tax jurisdiction in which the third-party takes delivery from seller. Therefore, Qualified Purchaser remits Colorado state, Arapahoe County, RTD, and CD special district sales taxes to the Department.

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-104(1)(b)(i). Exchanged Tangible Personal Property

(1) **General Rule.** When 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.

(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

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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 to the Resale Requirement - 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. "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 purchaser. 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 to sell 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)(I)(B), C.R.S. and §.12-6-101, et seq., C.R.S. for laws governing motor vehicle dealer licensing.

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DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

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Deleted: 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.

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

Rule 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) 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.

Deleted: Regulation

Deleted: (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)