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**Proposed Rules and Regulations  
Sales and Use Tax**

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# PROPOSED RULES AND REGULATIONS

## SALES AND USE TAX

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Unless otherwise noted, all references herein to Chapter 3.01 or to any Section or subsection shall refer to Chapter 3.01 of the City of Lakewood Municipal Code.

## **PART 1. GENERAL PROVISIONS**

### **Regulation 3.01.160 Intercity Claims for Recovery**

The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or retailer to correctly pay, collect, and remit sales and use taxes to the City.

- (1) Defined. As used herein, "Claim for Recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (2) Limitation Period. The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery, subject to the provisions of C.R.S. 29-2-106.1(5).
- (3) Claims for Recovery made by the City.
  - (a) When it is determined by the Chief Financial Officer that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the retailer that taxes are being improperly collected and remitted, and that as of the date of the notice the retailer must cease improper tax collections and remittances.
  - (b) The City may make a written Claim for Recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may initiate procedures for collection of the tax from the taxpayer or retailer. The decision to make a Claim for a Recovery lies in the sole discretion of the City. Any Claim for Recovery shall include a properly executed release of claim from the taxpayer and/or retailer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the Claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a Claim for Recovery may, for good cause, request an extension of time to investigate the Claim, and approval of such extension by the City shall not be unreasonably withheld.
  - (c) A municipality may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer. In such event, the City shall seek recovery from such taxpayer, which shall be responsible for paying or remitting the tax to the City and seeking a refund from the municipality to which the taxpayer incorrectly paid or remitted the tax.
- (4) Claims for Recovery made against the City.

Within ninety (90) days after the City's receipt of a Claim for Recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the claim in writing that the Claim is either approved or denied in whole or in part, including the reasons for the decision. If the Claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a Claim is submitted jointly by a municipality and a retailer or taxpayer, the check shall be made to the parties jointly. Denial of a Claim for

Recovery may be made only for good cause, including that the City has previously paid a Claim for Recovery arising out of an audit of the same taxpayer conducted by the municipality submitting the claim.

## **PART 2. ADMINISTRATIVE**

### **Regulation 3.01.230 Definitions: Purchase or Sale**

"Purchase" or "Sale" shall mean any transaction whereby a person, in exchange for any consideration, such as money or its equivalent, property, the rendering of a service, or any promise thereof: (i) transfers or agrees to transfer all or part of its interest, or the interest of any other for whom it is acting as an agent, in any tangible personal property to any other person; or (ii) performs or furnishes, or agrees to perform or furnish, or contracts to have another perform or furnish, any service taxable under Chapter 3.01 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 3.01.230 Definitions: Tangible Personal Property**

"Tangible personal property" embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances, including "digital products," which are dealt in and capable of being possessed and exchanged.

"Digital products" include, but are not limited to, digital images, digital audio-visual works, digital audio works and digital books. "Digital audio-visual works" include, but are not limited to, television programs, movies, video games and any similar works.

"Tangible personal property" does not include any of the following:

- (1) Real property, such as land and buildings;
- (2) Tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, irremovable without substantial damage to the premises. Property severed from real estate becomes tangible personal property.
- (3) Intangible personal property constituting mere rights of action and having no intrinsic value, such as most contracts (not including maintenance contracts and warranty agreements), deeds, mortgages, stocks, bonds, certificates of deposit or certificates of membership, or redeemable United States postage or revenue stamps sold for postage or revenue purposes.
- (4) Water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.

"Taxable sales" means gross sales less any exemptions and deductions during any given reporting period.

- (1) "Taxable sales" excludes:
  - (a) 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;
  - (b) Sales exempt from the sales tax;
  - (c) The fair market value of property taken in exchange by a retailer for resale in the usual course of its business;
  - (d) Deposits on returnable containers;
  - (e) Any worthless account actually charged off for income tax purposes during the reporting period, to the extent that 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 (See Section 3.01.280); and
- (2) "Taxable sales" includes:
  - (a) Any recovery of a bad debt previously deducted from gross sales to determine taxable sales. See Regulation 3.01.270 for Credit Sales.
  - (b) Authorized adjustments in a sales price, such as discounts and credits. 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. If the price upon which the tax was computed and paid to the City by the retailer is subsequently adjusted prior to payment of the tax by the purchaser, a proper credit may be taken by the retailer against the tax due on the next return.

No credit for discount shall be allowed to a retailer unless the related decrease in sales tax is actually 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 sold article is returned to the retailer for adjustment, replacement or exchange under a guarantee as to quality or service, and if another article is substituted pursuant to the guarantee free or at a reduced price, then the tax shall be recomputed on the actual amount paid to the retailer for the substituted article, taking into consideration any other adjustments made at the time of the replacement.
  - (c) Any sales of tangible personal property, including otherwise taxable sales of food, where all or part of the proceeds of such sales are donated to an organization that is exempt from taxation under the Tax Code.

**Regulation 3.01.240(B)(1) Tax Must be Separately Stated; Liquor by the Drink**

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

- (1) The tax may be included in the price of the drink; or
- (2) The tax may be separately stated and added to the price of the drink.

The retailer may elect to operate under method (1) for drinks sold at the bar and method (2) for drinks sold at the tables, or it may elect to operate under the same method for drinks sold at the bar and tables. Once having made the election, the retailer must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the Finance Department. If the retailer elects to use different methods on bar and table sales, tax must continue to be collected in the manner elected, unless permission to change the election is first obtained from the Finance Department. The retailer must keep adequate records if using different methods on bar and table sales.

If the retailer 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 (1) plus the applicable sales tax percentage. Example: taxable sales = (gross sales – deductions)/(1+0.075), where 7.5% is the combined state and city sales tax percentage.

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

**Regulation 3.01.250 Collection and Remittance of Tax**

All purchases subject to sales or use tax must be reported on the City of Lakewood Sales and Use Tax Return form found on the city’s online tax filing system. Completed forms may be submitted via the online system or printed and mailed to the City.

If any retailer makes overpayment of the tax or is entitled to a credit on its tax payments because of mistake, errors or canceled sales, credit for the amount of overpayment may be taken by the retailer on a subsequent return or returns. All credits are subject to review by the Chief Financial Officer. If the retailer is no longer engaged in business, then it should apply for a refund. (See Regulation 3.01.540.)

**Regulation 3.01.250(A) Collection and Remittance of Tax: Filing Frequencies**

Approval of requests for thirteen four-week, quarterly, or seasonal reporting periods shall be granted only if, in the opinion of the Chief Financial Officer, such approval shall not jeopardize the collection of the tax. Permission to change the time or interval for filing reports and paying tax shall not be granted to a retailer who is delinquent.

If any retailer has been granted permission to file reports and pay tax on other than a monthly basis, and such retailer becomes delinquent, then such permission may be revoked by the Chief Financial Officer at any time. Immediately following notice of such revocation, such retailer shall be required to file reports and pay tax, interest and penalties on a monthly basis.

Requests for permission to file reports and pay tax on a quarterly basis, if approved, shall take effect on the first (1<sup>st</sup>) day of the next calendar quarter which begins at least fifteen (15) days after the date of approval.

**Regulation 3.01.250(A)(3)(b) Collection of Tax: Filing Frequencies – Seasonal**

The applicant shall state on its sales tax license application the months during which it expects to operate the business in the City and the place or places where the business shall be operated and must notify the Finance Department of any changes thereof.

**Regulation 3.01.250(A)(3)(c) Collection of Tax: Filing Frequencies – Annual**

Retailers who provide non-taxable services and do not sell at retail must still file use tax returns with the City, even if the tax liability is zero. Such retailers may make a request to the Finance Department to make returns and pay taxes annually. Annual filers are encouraged to review contact information, business address, and phone numbers of the business when filing the annual return.

**Regulation 3.01.250(D) Collection of Tax; Exempt Sales**

Some transactions are exempt from Lakewood sales tax. To show that a sale qualifies as exempt under the Lakewood code, the retailer is responsible for ensuring it has the proper documentation from the purchaser. Purchasers must be able to prove to the satisfaction of the retailer that they are exempt from Lakewood sales tax. In the event that the purchaser does not have the appropriate documentation, the retailer must assess tax on the transaction and should suggest that the purchaser follow-up with the Lakewood Finance Department.

The purchaser must, at the time of transaction, provide to the seller a completed Home Rule Affidavit of Exempt Sale. The Affidavit is to be used for each exempt purchasing transaction by: resellers/wholesalers, Lakewood-qualified charitable entities, government entities (federal, state, or local), foreign and diplomat officials, and construction permit holders. By signing the Affidavit, the purchaser is swearing, under penalty of perjury, to the accuracy of the statements on the Affidavit. A single Affidavit may be used for exemption from both State and Lakewood tax with the appropriate supporting documentation for each taxing entity. A purchase exempt under State law does not automatically result in exemption of the Lakewood tax.

Purchases must be made for official business purposes. Items purchased by a charitable organization must be for the regular charitable function or purpose. Items purchased by a wholesaler must be purchased for sale in the wholesaler's ordinary course of business.

Purchases must be billed to and paid directly by the funds of the organization or agency in order to qualify for exemption. Purchases do not qualify for tax exemption when: payment is made with cash (without a purchase order), personal check, or personal credit card; or the purchase is made with the exempt organization's credit card, but the bill for such credit card is paid out of non-organization funds. A purchase is not exempt if made by an exempt organization on behalf of either an individual or a non-exempt organization where: (i) the individual or non-exempt organization reimburses the exempt organization for the full purchase price of the good or service; and (ii) the purchased good, or right to the



taxable service purchased, is transferred to the individual or non-exempt organization for its use, consumption or benefit.

The retailer must verify the information on the Affidavit and complete the lower portion of the form. Supporting documentation, as well as the Affidavit, must be retained by the retailer. Supporting documentation varies by purchaser:

- (1) Reseller/Wholesaler – A copy of its business or sales tax license (does not need to be located in Lakewood)
- (2) Charitable Organization – A copy of its Lakewood-issued Certificate of Exemption
- (3) Government – A copy of its State-issued Certificate of Exemption
- (4) Foreign and Diplomat Officials – A state department issued card with the name/photo of the bearer on the card
- (5) Construction permit holder – A copy of a valid permit issued by the City of Lakewood or another municipality where a local use tax has been paid.

**Regulation 3.01.260                      Duty to Keep Records**

- (1) General. It is the duty of every Taxpayer to keep adequate and complete records. These records must show the following:
  - (a) Gross receipts from all sales, or from rental payments from leases, of tangible personal property (including any services that are a part of the sale or lease), irrespective of whether the seller or lessor regards the sale(s) or lease(s) to be taxable or nontaxable.
  - (b) All deductions and exemptions allowed by law and claimed in filing returns.
  - (c) Total purchase price of all tangible personal property purchased for sale, use, consumption or lease in the City.

Records shall also include the books of account maintained by or on behalf of the Taxpayer, together with all bills, receipts, invoices, cash register tapes, general ledgers, depreciation schedules or fixed assets listings, invoices for expenses and fixed assets, purchase contracts, or other documents supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

- (2) Records Formats. Taxpayers must comply with applicable standards for legibility, reproducibility, access, maintenance and retention regardless of the format on or in which such records are kept. Such records shall not require the City to use any special or unique apparatus, software, process or handling in order to examine such records without unreasonable delay or undue burden on the City.
- (3) Records prepared by automated data processing systems. An automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of the Taxpayer's tax liability.
  - (a) *Recorded or re-constructible 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 that they are processed, then the system must have the ability to reconstruct these transactions.

- (b) *General and Subsidiary Books of Account.* General ledgers and subsidiary ledgers, with source references, shall coincide with financial reports for tax reporting periods.
  - (c) *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 Finance Department upon request. The system should be designed so that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and similar items are readily available.
  - (d) *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 ensure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.
- (4) Record Retention. All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three (3) years from the date of the transaction.
- (5) Examination of Records. All of the foregoing records must be made available for examination on request by the Finance Department.

### **Regulation 3.01.270                      Credit Sales**

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. Credit sales do not include credit card sales. Credit card sales are cash sales and must be reported currently.

If the retailer elects to report the credit sales on the cash basis, it 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. No deduction for bad debts is allowable when the retailer is reporting its taxable sales on the cash basis.

If the retailer reports the credit sale on the accrual basis, it 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.

A cash discount, also known as a sales discount or purchase discount or early payment discount, allowed for payment made on or before a given date is not an allowable adjustment to the selling price in determining taxable sales (see Regulation 3.01.230 "Taxable Sales").

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.

### **PART 3. SALES AND USE TAX LICENSE**

THERE ARE NO REGULATIONS FOR THIS PART

### **PART 4. SALES AND USE TAX**

#### **Regulation 3.01.410            Imposition of Tax**

A sale by a licensed or unlicensed retailer to a user or consumer and which is not for resale is a retail sale. 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 person owes the tax on the fair market value of the tangible personal property received in exchange, except as addressed in 3.01.230 under the definition of "Price or Purchase Price."

#### **Regulation 3.01.410(A)(2)    Imposition of Tax; Sales Tax – Trusteeship**

The use of recognized accounting procedures to segregate and account for the sales tax collected shall be considered proper trusteeship of the funds. No statute of limitations applies to funds of the City in the possession of the retailer, and such moneys are collectible at any time after their due date upon demand of the Chief Financial Officer.

#### **Regulation 3.01.410(B)        Imposition of Tax; Use Tax**

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. "Consuming" means the act or process of consumption and includes waste, destruction, or using up. 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. The obligation for the payment of the tax is upon the user whether the tax is a sales tax or a use tax. However, in the event that a retailer fails to collect the appropriate sales tax, the Chief Financial Officer may assess the tax due against either the retailer or the purchaser.

The use to which property is put, in order to bring about imposition of the use tax, is not necessarily the actual and ultimate use, 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 use 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.

Tangible personal property withdrawn from inventory for use by the business where sales tax was not lawfully imposed shall be subject to use tax.

**Regulation 3.01.410(E) Imposition of Tax; Schedules/Systems**

The tax imposed pursuant to Section 3.01.410 shall be imposed in accordance with the following schedule:

<u>Purchase Price</u>	<u>Lakewood Tax (3%)</u>
\$0.00 - 0.16	\$.00
0.17 - 0.49	.01
0.50 - 0.83	.02
0.84 - 1.16	.03
1.17 - 1.49	.04
1.50 - 1.83	.05
1.84 - 2.16	.06
2.17 - 2.49	.07
2.50 - 2.83	.08
2.84 - 3.16	.09
3.17 - 3.49	.10

On all sales in excess of three dollars and forty-nine cents (\$3.49), the tax shall continue to be imposed at three percent (3%). Fractional amounts equal to or greater than one-half cent (\$.005) shall be rounded upward to the next highest cent. If the sale consists of a number of items, each of which has a sales price less than the minimum taxable sale, then tax must be collected on the combined total sales prices of all the items.

Use tax at the rate of three percent (3%) shall be paid where sales tax or use tax has not otherwise been lawfully imposed and paid.

**Regulation 3.01.420 Transactions, Services and Tangible Personal Property - Taxability**

Except in the case of specific statutory exemptions, tax is imposed upon the sale of tangible personal property to the user or consumer in this City and also upon the sale of those services specifically enumerated in Chapter 3.01 as taxable.

Services taxable under Chapter 3.01 include: (i) admissions to motion pictures and establishments which are licensed to serve malt, vinous or spirituous liquors; (ii) gas, electric and steam services; (iii) linen services; (iv) lodging services (v) security system services; (vi) software services – modified or custom; (vii) sound system services; (viii) telecommunication services; (ix) television and entertainment services; and (x) warranty and maintenance service contracts. All such sales are subject to the tax imposed by Chapter 3.01. This tax is imposed upon the transaction called the sale and is applicable whether the transaction is between a retailer and a purchaser or between private parties.

**Regulation 3.01.420(B) Transactions, Services and Tangible Personal Property - Taxability; Auctions**

The auctioneer of any sale of tangible personal property, whether or not in possession of such property and regardless of how the property might have been acquired, must collect the tax, file a return, and remit the tax thereon.

**Regulation 3.01.420(C) Transactions, Services and Tangible Personal Property - Taxability; Automotive Vehicles**

The collection of sales tax as provided in Section 3.01.420(C) does not apply to the registration, licensing or titling of automotive vehicles transferred by gift or operation of law or where the transaction is otherwise exempt from the imposition of sales tax. A bona fide gift of tangible personal property is not a "sale." (Refer to Special Regulation: Gifts, Premiums and Prizes)

**Regulation 3.01.420(F) Transactions, Services and Tangible Personal Property – Taxability; Custom Orders**

Sales and use tax applies to charges for manufacturing, producing, fabricating and processing tangible personal property 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 that restores a used or worn item of tangible personal property to its essentially original form and use is not considered made-to-order or tailor-made.

Tailoring and alterations are not considered taxable.

The amount charged by 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 3.01.420(G) Transactions, Services and Tangible Personal Property - Taxability; Food, Beverages and Candy**

Any food or drink not purchased with federal food stamps or WIC vouchers or WIC checks is subject to tax, unless exempted by §3.01.430(F) or the related Regulation.

Food and drink sold to or purchased by offices and commercial establishments are subject to sales tax. If sales tax is not charged at the point of purchase, use tax shall be due.

In determining whether a product is food for domestic home consumption, unless the retailer is described in section 3.01.420(G)(1) of the Tax Code, no inference is drawn from the type of retailer selling the product, the location of the product within a store, or the manner in which the product is marketed.

**Regulation 3.01.420(I)(2) Transactions, Services and Tangible Personal Property – Taxability; Gas, Electricity and Other Fuel - Commercial Consumption**

Gas and electric service furnished within the City is subject to the tax imposed by Section 3.01.420, 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 and electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

(See Regulation 3.01.430(H) for certain limited exemptions.)

**Regulation 3.01.420(I)(3) Transactions, Services and Tangible Personal Property - Taxability; Gas, Electricity and Other Fuel - Residential Consumption**

Gas and electricity are used by occupants of residences if 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 of gas and electricity includes service to a 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, townhomes, and mobile/trailer homes, who are served through a single meter and whose rate has been classified by statute or PUC regulations as residential are subject to sales tax.

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 are subject to sales tax if the gas or electricity is used for residential use as defined herein.

Sales of butane, propane, fuel oils, coal, coke or wood are subject to sales tax if used for residential use as defined above.

**Regulation 3.01.420(L) Transactions, Services and Tangible Personal Property – Taxability; Lodging Services - Lodging Payments or Deposit**

Amounts paid for lodging services, as defined under Section 3.01.230, are subject to the tax imposed under Section 3.01.410 unless the rental period is for a term of thirty (30) consecutive days or more, in which case the rental paid is exempt. (See also Section 3.01.430(I) and Regulation 3.01.430(I).)

Deposits paid for lodging services are not taxable when paid in advance. When lodging services are provided, then any deposits previously paid are taxable. If lodging services are not provided, then any deposits previously paid are taxable to the extent that such deposits are not refunded to the customer.

**Regulation 3.01.420(M) Transactions, Services and Tangible Personal Property – Taxability; Security System Services**

Security system services includes the amount paid or charged for electronic monitoring, whether the system is leased, rented or owned. Any amount paid or charged for installation of such a security system would not be subject to sales tax, if separately stated.

All materials and equipment used in providing such services that are located inside the City are subject to use tax, if the requisite sales tax has not been paid. If title of the material or equipment is transferred to the customer, then the material or equipment is deemed a retail sale and subject to the City sales tax. Sales of material and equipment are considered separate and distinct retail transactions from the charges for security and/or monitoring system services.

**Regulation 3.01.420(N) Transactions, Services and Tangible Personal Property - Taxability; Software Services – Modified or Custom**

Modified software or custom software program services include, but are not limited to, analysis of the customer's requirements, consulting, programming, testing, and updates, regardless of which retailer supplies each of the services.

The internalized instruction code that controls the basic operations (i.e., arithmetic and logic) of the computer causing it to execute instructions contained in system programs is an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are subject to sales tax. It is immaterial that the retailer does or does not charge separately for such internal code systems.

A software program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his electronic data processing system. The software program may be in the form of:

- (1) System software programs (except for the instruction codes that are considered tangible personal property, as described above, which control the hardware itself and allow it to compile, assemble, and process application programs).
- (2) Applications software programs created to perform business functions or to control or to monitor processes.
- (3) Pre-written software programs (canned programs) that are either systems programs or application programs and are not written specifically for the user.
- (4) Custom software programs: programs created specifically for the user. Section 3.01.230 defines a "modified or customized computer program" as meeting the following elements:

- (a) The preparation or selection of a program for the customer's use requires a retailer to analyze the customer's requirements; and
- (b) The program must be created, or requires adaptation, by a retailer in order to be used by a specific output device.

For the purposes of this subsection 4, "retailer" includes, but is not limited to, a retailer from whom the program is acquired, or who provides consulting or programming.

Programs meeting the criteria in (a) and (b) above, whether on machine-readable media, downloaded over the Internet, accessed via a web browser or web-based application or entered into a computer directly, are considered modified or customized programs and are subject to tax pursuant to Section 3.01.410(N).

Programs not meeting the criteria in (a) and (b) above are subject to sales tax pursuant to Section 3.01.410(Q). For example, a retailer that sells prepackaged or "off-the-shelf" programs, when such programs are fully usable by the customer without modification, is considered to be a sale of tangible personal property subject to sales tax on the purchase price of such property pursuant to Section 3.01.410(Q).

Consulting service or analysis time charges are not subject to sales or use tax if a program is not purchased.

**Regulation 3.01.420(Q) Transactions, Services and Tangible Personal Property - Taxability; Tangible Personal Property**

Unless otherwise exempt, all sales of tangible personal property, including digital products, at retail in the City, whether between a licensed retailer and a purchaser or between private parties, are subject to the imposition of the sales tax. "Tangible Personal Property" is defined in Section 3.01.230.

Failure to separately state taxable and non-taxable purchases shall subject the entire purchase price to sales tax except where a contractor has billed "lump sum."

Digital Products – Digital Audio-Visual Works. The method of delivery does not impact the taxability of a sale of tangible personal property. Examples of methods used to deliver tangible personal property under current technology include, but are not limited to, the following: DVD, electronic download and internet streaming.

The purchase of a subscription that provides the purchaser with access to any tangible personal property that can be streamed, downloaded or delivered by any other method constitutes a sale of tangible personal property. The purchase price paid for a periodic subscription is subject to tax if the property accessed or received via the subscription is subject to tax. Each periodic payment is a separate sale.

Examples (non-exhaustive list):

- (1) Purchaser buys a movie or video game on a DVD, Blu-Ray or other electronically readable disc. Sales tax is due on the purchase price of the movie.



- (3) Purchaser buys a movie or video game through the internet, and then downloads the movie or video game to the purchaser's computer or other device. Sales tax is due on the purchase price of the movie or video game.
- (4) Purchaser buys a movie or video game, which purchaser accesses through an internet browser or other platform. Purchaser does not save a copy of the movie or video game to purchaser's computer. Sales tax is due on the purchase price of the movie or video game.
- (5) Purchaser pays a monthly fee, which allows purchaser to stream movies and/or television shows or play video games from a library of available titles. Sales tax is due on the monthly fee.

**Regulation 3.01.420(R) Transactions, Services and Tangible Personal Property – Taxability; Telecommunication Services - Intrastate, Mobile & Data**

Intrastate telecommunication service furnished within the City is subject to the tax imposed by Section 3.01.410, whether furnished by public, private, mutual, cooperative or governmental corporations or agencies. The term "service" includes carrier access services, additional listings, joint-user service, nontalking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, and any other charges assessed or passed on to the consumer.

**Regulation 3.01.420(U) Transactions, Services and Tangible Personal Property - Taxability; Warranty & Maintenance Contracts**

If a separate warranty or maintenance contract is purchased at the time of acquiring tangible personal property, or subsequent to the purchase of tangible personal property, regardless of whether the tangible personal property is rented, leased or purchased, then the entire sales price of the warranty or maintenance contract is subject to sales tax. Parts and other goods or services, if provided in performance of such separate warranty or maintenance contract on which tax was paid hereunder, are not taxable under this section.

For the purposes of this Regulation, "a separate warranty or maintenance contract" shall mean and include any agreement between a purchaser and a retailer whereby the purchaser pays, whether up front or over time, for the privilege of receiving, at a future date, repair or maintenance services on or for the tangible personal property at a reduced cost or no cost, and regardless of whether the amount paid for such privilege was included in the transaction for purchase of the tangible personal property.

When an item of tangible personal property is rented or leased with a warranty or other contract for the maintenance, repair or servicing of the tangible personal property for a given period of time, then the sales tax shall be imposed, collected and paid upon the rented or leased items, including the value of the warranty or other contract, if the rental or lease is subject to the sales tax under the provisions of Section 3.01.120(9).

**Regulation 3.01.430(A) Exemptions; Cigarettes**

"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 that is not a cigarette is subject to sales tax.

**Regulation 3.01.430(B) Exemptions; Constitutional Preclusion from City Sales and Use Tax**

All sales the City is prohibited from taxing under the constitution or laws of the United States, the State, or the city's charter are exempt.

- (1) *Diplomatic tax exemption.* Sales to ambassadors, consuls, and their employees who are citizens of the nation that they are representing are exempt. Retailers must obtain from purchasers a completed Affidavit of Exempt Sale and a U.S. Department of State issued card with the name and photo of the bearer on the card.
- (2) *Interstate commerce.* Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional. Retailers' must retain shipping records, bills of lading, or other proof satisfactory to the Chief Financial Officer to substantiate any exemption allowed for sales in interstate commerce.
  - (a) Sales involving construction materials for the construction and maintenance of railroad tracks operating in interstate or foreign commerce are exempt.
  - (b) Sales of merchandise ordered for delivery from a location outside the City to a location in the City are not necessarily exempt even though the merchandise may be shipped from outside the City directly to the purchaser or indirectly through the retailer. Contact the City to determine taxability.
- (3) *Satellite television and radio.* Pay satellite television services and pay satellite radio services are exempt from tax under 3.01.430(B) of the Tax Code.
- (4) *Internet access services.* Providers of internet access services, as defined in the Tax Code, shall collect from their customers, and remit to the City, City sales tax imposed on such services. *Note: On June 30, 2020, the Internet Tax Freedom Act will sunset. At such time, internet access services will no longer be taxable, and providers will no longer be obligated to collect and remit such taxes.*

**Regulation 3.01.430(D)(1-2) Exemptions; Exempt Entities – Governments and Schools**

No sales or use tax is imposed on the purchase, storage, use or consumption by the United States government, the State of Colorado, or any department, institution or subdivision of either, when the purchase, storage, use or consumption is executed in such entity's governmental capacity. No sales or use tax is imposed on the purchase, storage, use or consumption by schools, as set forth in 3.01.440(D)(2).

To secure exemption from sales and use tax, the goods must be paid for directly to the seller by warrant, credit card or check drawn on governmental or school funds.

### **Regulation 3.01.430(D)(3)(a) Exemptions; Exempt Entities - Sales to Charitable Organizations**

There is no sales tax on articles *sold to* a charitable organization holding a Lakewood-issued certificate of exemption, if purchased by the charitable organization in the conduct of its regular charitable functions and activities and purchased using the charitable organization's funds.

For the City to determine whether an organization qualifies for the exemption, the organization must submit the following information to the Finance Department:

- (1) A copy of the organization's federal exemption letter;
- (2) A copy of the organization's articles of incorporation;
- (3) A copy of the organization's bylaws;
- (4) A list of the organization's officers and directors (if not contained within the organization's bylaws or articles of incorporation);
- (5) The organization's financial statements showing the source of funds and its expenditures; and
- (6) A detailed list of all fundraising and sales activities taking place within Lakewood.

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

Purchases by a nonprofit organization or association are subject to the tax if the organization does not present a Lakewood certificate of exemption.

### **Regulation 3.01.430(D)(3)(b) Exemptions; Exempt Entities - Sales by Charitable Organizations**

A charitable organization that makes repeated sales of tangible personal property to the public, where the principal use of the premises from or at which such sales are made is to make such sales, must have a sales tax license and collect and remit tax in the same manner as any other retailer. The fact that the merchandise sold was acquired by gift or donation or that the proceeds are to be used for charitable purposes does not make the sale exempt from tax.

### **Regulation 3.01.430(F)(1) Exemptions; Farm - Farm Closeout Sale**

In a farm closeout sale, 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 3.01.430(F)(2-4) Exemptions; Farm - Livestock and Poultry**

"Livestock" means domestic animals as found on a farm or ranch such as cattle, sheep, swine, goats, mares and stallions. "Livestock" does not include animals kept as pets for pleasure and recreation.

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

**Regulation 3.01.430(G) Exemptions; Food: Food for Home Consumption, SNAP and WIC**

The City follows the State of Colorado's Regulations for taxation of food pursuant to C.R.S. § 39-26-102(4.5).

The following items might qualify for exemption as food under the Supplemental Nutrition Assistance Program (SNAP) or the federal special supplemental nutrition program, but do not qualify for exemption as "Food for Home Consumption" (unless purchased with federal food stamps or a WIC instrument):

- (1) Carbonated water marketed in containers (e.g., sparkling or seltzer water, tonic water, soft drinks and other sugar or sugar substitute carbonated beverages);
- (2) Chewing gum and candy;
- (3) Seeds to grow food and plants to grow food;
- (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); and
- (8) Food and beverages sold by or through vending machines.

Prepared food or food marketed for immediate consumption do not qualify for tax exemption under "Food for Home Consumption," as defined in Section 3.01.230, or SNAP. This includes all hot foods and food marketed to be heated on the premises.

**Regulation 3.01.430(H) Exemptions; Fuel and Power**

Electricity, coal, gas, fuel oil, coke, or nuclear fuel are exempt when used for any of the following purposes: mining (including oil and gas exploration and production), refining, irrigation, construction, telecommunication services, and street and railroad transportation services.

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 Section 3.01.420(I) is subject to sales tax.

**Regulation 3.01.430(I) Exemptions; Lodging Services**

The written agreement must provide for occupancy of thirty (30) or more consecutive days. A written agreement includes a hotel registration, rent receipt, or similar document. A canceled check by itself shall not qualify as a written agreement. In the event the initial occupancy was for less than thirty (30) days, but is extended for a total of thirty (30) consecutive days or more, the lodging services become exempt for the entire period of occupancy.

Additional fees or charges separately stated on the invoice for specific hotel room services are taxable, such as pet fees, room service fees, telephone fees, movie/game rentals, cancellation fees, and forfeited deposits. The taxability of other purchases or services charged to the room, such as massages, laundry, salon and similar services, or purchases made at a hotel store, is determined by whether the purchases or services would otherwise be taxable.

**Regulation 3.01.430(J) Exemptions; Manufacturing**

Licensed persons engaged in manufacturing or compounding for use, profit or sale may purchase tax-free all articles of tangible personal property that enter into and become a component part of the article sold. Such tangible personal property that becomes a physical part of such product or service shall be deemed to have been sold at wholesale and shall be exempt from taxation. Any container, label or shipping case used to encase or enclose such product may be purchased tax-free by the manufacturer or compounder. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

Sales 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.

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

Examples of tangible personal property used as an aid in manufacturing, fabricating, producing or processing tangible personal property that are not exempt include, but are not limited to, the following:

- (1) Sales of carbon dioxide gas for use in the sale of draft beer shall be taxable to the retailer of the beer because the retailer 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, then the sale of the gas is exempt as a sale for resale.

- (2) Phosphoric and sulfuric acids 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. Accordingly, the processor is the consumer of such acids, which are taxable to the processor at the time of purchase of such items.
- (3) Flux, if used as a cleaning agent or as 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. Because the different functions are not mutually exclusive, exempt and nonexempt purposes may be served simultaneously, and in such cases the tax shall 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 used in a ball mill to grind silica sand to a desired fineness. In the course of the grinding, the balls wear out, 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 is used solely to supply all or a part of the water content of sausage and luncheon meats, then 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, then 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 that might remain as a film on the finished rubber product is a manufacturing aid used as a lubricant by the manufacturer, which is required to pay the sales tax at the time of purchase.
- (8) Cleaners purchased for use in preparing metal part surfaces prior to rustproofing 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 sales tax is imposed on the manufacturer at the time of purchase.

**Regulation 3.01.430(K)(1) Exemptions; Medical - Medical Supplies**

Physicians, surgeons, dentists, veterinarians and other licensed practitioners of the healing arts, as well as hospitals, nursing homes, clinics and the like, shall pay tax on their purchases of any equipment, instruments, furniture, fixtures and medical and surgical supplies used or consumed in the ordinary and usual course of business.

Medical care providers (i.e. hospitals, medical clinics, nursing homes, physicians in private practice) use a variety of medical goods in the course of performing services for which they are paid. If not specifically exempt under the Code, such goods are taxable to the purchaser at cost. Nutrition supplements, vitamins, personal hygiene products, and over the counter medicinal substances are taxable to the purchaser.

Purchases of medical supplies that would otherwise be taxable (i.e., nonexempt) are not rendered exempt if the provider is reimbursed under any government program or by any charitable organization. Purchases of such medical supplies remain taxable regardless of source of the funds unless purchased by an exempt entity.

Sales of prescription eyeglasses, including lenses and frames, are exempt from the imposition of sales tax; provided, however, that any additions to the lenses, such as anti-fog, scratch-resistant, anti-glare or anti-UV coatings, and coloring/tinting, are taxable and shall be separately stated on the customer's invoice. If such additions are not separately stated, the retailer shall collect from the purchaser and remit to the City sales tax on the entire Purchase Price.

If a transaction involves both exempt and nonexempt tangible personal property, and the nonexempt tangible personal property is not itemized on the patient's bill or invoice, the total purchase price of all tangible personal property in the transaction is subject to Sales Tax. The provider must charge, collect and remit the Sales Tax to the City. If the tangible personal property is consumed by the provider in the rendition of the service and not separately stated on the patient's bill or invoice, then the tangible personal property is subject to Use Tax at the provider's cost.

**Regulation 3.01.430(K)(2) Exemptions; Medical - Prescription Drugs and Prosthetic Devices**

Prescription drugs do not include medicinal substances that can be purchased over the counter, whether or not the substance is prescribed by a physician, or food. All sales and purchases of non-prescription drugs are taxable.

**Regulation 3.01.430(M) Exemptions; Newsprint, Printer's Ink and Newspapers**

Sales of newsprint and printer's ink to publishers of newspapers or commercial printers are exempt, but retailers must collect tax on all sales of equipment and other materials.

"Newsprint" is defined as inexpensive, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

**Regulation 3.01.430(N) Exemptions; Non-Residents**

The purpose of this exemption is to exempt tools, equipment and similar tangible personal property, other than construction materials and construction equipment, from the imposition of City use tax on non-residents. Where a non-resident engaged in business within the City purchases tangible personal property for use or consumption in the business, such tangible personal property is subject to sales or use tax as set forth in the tax code.

**Regulation 3.01.430(Q)(1) Exemptions; Tangible Personal Property Outside the City - Deliveries**

Sales of tangible personal property located within the City at the time of sale and delivered within the City are taxable, irrespective of: (i) the ultimate destination of the property sold; (ii) where the parties to the contract of sale are located; or (iii) where the contract was made or accepted or the funds paid.

**Regulation 3.01.430(S) Exemptions; Vending**

When the selling price of the item is more than sixteen cents (\$.16), tax applies to the selling price, not only the amount in excess of sixteen cents (\$.16).

A retailer making vending machine sales of individual items of merchandise at a selling price of sixteen cents (\$.16) or less and also making vending machine sales at a price of more than sixteen cents (\$.16) must include the sales price of all vended items in the gross sales on its sales tax return but may deduct the tax-exempt sales of sixteen cents (\$.16) or less to determine taxable sales.

Vending machine games of chance means vending machines that vend tangible personal property based on random chance or the operator's skill, such as "claw games" and similar machines.

**Regulation 3.01.430(T) Exemptions; Wholesale Sales**

Use tax is a complement to sales tax. Because sales tax is imposed on retail sales, which are all sales other than wholesale sales, as defined in section 3.01.230, use tax shall not apply to the storage, use or consumption of tangible personal property purchased by a retailer for resale within the regular course of business.

Tangible personal property purchased tax-free for resale, or as an ingredient of a manufactured or compounded product, and subsequently withdrawn from stock for the purchaser's own use or consumption is not exempt from use tax and shall be taxed at the acquisition cost of all materials. The tax liability attaches at the time that the tangible personal property is withdrawn from stock.

To be exempt from the operation of the sales tax and use tax, tangible personal property purchases by a manufacturer, which property enters into the processing of the manufactured article, must become a necessary and desirable constituent part thereof, wholly or partially, either by chemical or mechanical means. (See Regulation 3.01.430(J).)

It is the duty of the wholesaler to collect the tax unless the purchaser furnishes the wholesaler with satisfactory proof that the sale is exempt under Chapter 3.01, such as the purchaser's tax license number



or a building permit. In case of doubt, the wholesaler should contact the Finance Department or collect the tax. (See also Regulation 3.01.250(D).)

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

## **PART 5. COLLECTION AND ENFORCEMENT; REFUNDS**

### **Regulation 3.01.530                      Sale of Business**

Sales tax shall be remitted by the purchaser of the business 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, then 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, then the fair market value.

### **Regulation 3.01.540                      Refunds**

- (1) Process.
  - (a) Claims for refund shall be executed and submitted to the Finance Department through the City's online system or on forms furnished by the Finance Department in accordance with instructions accompanying such forms or appearing thereon.
  - (b) Claims shall be signed by the claimant or its authorized officer or employee.
  - (c) Claims for refund must be submitted within three (3) years after the applicable return is filed; provided, however, that if the three-year limitation period for assessment of tax has been extended, then a claim for refund or credit may be made within such extended period.
  - (d) The Finance Department may require such additional information as may be deemed necessary to properly verify the contents of a claim for refund before any refund payment will be authorized.
- (2) Third Parties. A purchaser who paid tax to a Lakewood retailer but asserts that a sale is exempt from or not subject to tax must submit a claim for refund along with all invoices showing where tax was collected and documentation showing the basis for exemption.
- (3) Refunds – Exempt Entity – Building Permits. In addition to the requirements of section 3.01.450(A), claims for refund by a tax-exempt entity involving a building permit shall be supported by such documentation the Finance Department may reasonably require, including, but not limited to, proof of payment by the tax-exempt entity to the contractor for the project.

- (4) Taxes Remitted by Retailers. If, after a retailer has submitted a sales or use tax return to the City, it is determined that the amount paid exceeds what is due, the City, upon a claim for refund submitted in accordance with this regulation, shall refund the excess to the retailer or credit such amount against a subsequent remittance by the retailer.
- (5) Taxes Erroneously Paid to Another Jurisdiction. When the Chief Financial Officer determines that sales and/or use taxes owed to the City were paid to another municipality, the City will promptly notify the taxpayer and direct that improper collection and remittance cease. In order to recover such taxes, the City may either:
  - (a) Make a written claim for recovery directly to the municipality that received the tax, penalty and/or interest owed to Lakewood; or
  - (b) Institute procedures for collection of the tax, penalty and/or interest from the taxpayer or retailer.
- (6) Inter-period Credits Not Permitted

A retailer who refunds tax to a purchaser that was paid to the City on a previously filed tax return must amend the return and request a refund by submitting a refund in the city's online system, or on forms furnished by the Finance Department, to obtain a refund of the claimed overpayment.

Retailers are not permitted to take a credit against future liabilities for such tax by, for example, taking a deduction for the amount of the sale or reporting no tax due. Retailers taking inter-period credits will be assessed for the actual tax due plus penalties and interest.

Similarly, retailers are not permitted to take deductions for returned goods or bad debts if the deduction exceeds the current period's gross sales. If this occurs, the retailer must submit a claim for refund. The City does not consider issuing a refund or a credit for the tax invoiced on an exempt sale a "returned good" eligible for deduction on a subsequent return.

## **PART 6. AUDIT AND ASSESSMENT**

### **Regulation 3.01.660 Coordinated Audit**

- (1) Any taxpayer licensed in the City pursuant to Chapter 3.01.310 and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.
- (2) Within 14 days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Lakewood Finance Department, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the retailer holds a current sales tax license and a declaration that the retailer will sign a waiver of any limitations period on the City's right to recover tax owed by the taxpayer for the audit period.
- (3) Except as provided in paragraph (7) below, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the three (3) year limitations period may

be audited by this City during the succeeding twelve (12) month period only through a coordinated audit involving all municipalities electing to participate in such an audit.

- (4) If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (3), the Chief Financial Officer shall so notify the Chief Financial Officer of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Chief Financial Officer shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.
- (5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the City's Finance Department shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The Finance Department shall cooperate with other participating municipalities to, whenever practical, minimize the number of auditors that will be present on the retailer's premises to conduct the coordinated audit on behalf of the participating municipalities.
- (6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City's Finance Department shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The Finance Department shall also propose a schedule for the coordinated audit.
- (7) The coordinated audit procedure set forth in this section shall not apply:
  - (a) When the proposed audit is a jeopardy assessment.
  - (b) To audits for which a notice of audit was given prior to the effective date of this section.
  - (c) When a taxpayer refuses to promptly sign a waiver of the three (3)-year limitations period.
  - (d) When a taxpayer fails to request a coordinated audit within the specified time.



SALES AND USE TAX SPECIAL REGULATIONS

THESE SPECIAL REGULATIONS ARE PROMULGATED FOR SPECIFIC BUSINESSES AND SPECIAL CIRCUMSTANCES. THEY SHALL APPLY IN ADDITION TO AND HAVE THE SAME EFFECT AS THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS. UNLESS OTHERWISE NOTED, ALL REFERENCES HEREIN TO CHAPTER 3.01 OR ANY SECTION OR SUBSECTION SHALL REFER TO CHAPTER 3.01 OF THE CITY OF LAKEWOOD MUNICIPAL CODE, AND ALL REFERENCES HEREIN TO RULES OR REGULATIONS SHALL REFER TO THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS.

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## ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS

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

- (1) *Tangible personal property used by advertising agency and not for resale to clients.* If the advertising agency is primarily performing a service and does not sell tangible personal property, it does not need a sales tax license. Purchases by advertising agencies of articles delivered to a location in the City are subject to sales tax imposed by the retailer. If the retailer fails to collect sales tax, the advertising agency must remit use tax to the City. Invoices must be retained for all purchases of tangible personal property, including those for service contracts, to determine whether tax was appropriately paid.
- (2) *Tangible personal property sold to clients of advertising agency.*
  - (a) Sales tax also applies to the entire amount charged to customers or clients, including fabrication labor, for items of tangible personal property including, but not limited to, drawings, paintings, films, designs, photographs, lettering, assemblies, and printed matter, as well as tapes, CDs and DVDs (visual and audio). The format in which the items are delivered to the customer is irrelevant. These items are taxable whether they are delivered in electronic or hard copy formats. It is also irrelevant whether the items are used for reproduction or display purposes only.
  - (b) If an agency acquires articles for resale to its clients, then the agency must have a sales tax license in order to purchase such property tax-free for resale. The sales tax to be charged by the agency applies to the total amount of the retail sale of property, whether prepared by its employees or acquired from outside sources. Sales by an advertising agency, including direct mail advertising pieces, handouts, throwaways, and similar articles, are subject to sales tax if delivered to clients in the City. If the agency fails to collect sales tax, the client must remit use tax to the City. Records must be maintained to account for retail sales to customers.
- (3) *Flat rate for service.* If an advertising agency charges one flat fee for both the non-taxable service and the taxable tangible personal property, then the entire amount is taxable.
- (4) *Non-taxable services.* Non-taxable services, if separately stated, include, but are not limited to:
  - Writing copy for use in advertising to be broadcast on television or radio;
  - Writing copy for use directly in magazines or newspapers (does not include inserts. Inserts are taxable.)
  - Typesetting, color separation, and design;
  - Compiling statistical and other information;
  - Placing, or arranging for the placing, of advertising in print media, on billboards, and other forms of outdoor advertising, including on or in cars, buses, trains, or other facilities used in public advertising;
  - Charges for supervision, consultation, and research.

## AGRICULTURAL PRODUCERS

"Agricultural producer" has the meaning as set forth in Section 3.01.230 of the Code.

Agricultural producers are likened to manufacturers. As such, commercial packaging materials and commercial shipping materials purchased by an agricultural producer to deliver its products to its customers are not subject to tax. "Containers" and "shipping cases" include wire, twine, rope, tape and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products. Containers not used to deliver a product, or which are used for any purpose whatsoever prior to use in delivering a product to a customer, are subject to tax at the time of acquisition.

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

### **AUTOMOBILE DEALERS AND DEMONSTRATION VEHICLES**

Any motor vehicle purchased and offered for sale by a licensed motor vehicle dealer or wholesaler, as defined in C.R.S. § 44-20-102, which has received a full-use dealer plate or demonstration plate in accordance with C.R.S. § 42-3-116 and/or Colo. Code Regs. § 204-10:48, shall not be subject to use tax.

### **AUTOMOTIVE REPAIRS**

Parts and accessories installed in automotive vehicles are of the same nature as other sales of tangible personal property and, therefore, are taxable, unless provided in performance of a separate warranty, service or maintenance contract on which tax was paid. The taxable amount is the total charge made to the customer, with deductions therefrom allowed for service or labor charges if separately stated.

If a repair shop subcontracts a portion of the repair job to another repair shop, the total amount charged to the end customer is taxable, unless the charges for parts and labor are separately stated on both the subcontractor's invoice and on the invoice to the end customer. If separately stated, only the parts are subject to sales tax on the invoice to the end user.

Automotive vehicle dealers, garages, repairmen, and the like may purchase tax-free only tangible personal property for resale. These items must be separately stated on the invoice at the time of purchase. This exemption does not apply to service vehicles, machinery, equipment, supplies, tools, and similar items which they purchase for their own use or consumption and not for resale. Supplies consumed in the performance of a job (such as sandpaper and masking tape), and not separately stated on the invoice to the customer, are taxable to the repairman.

Automotive repair shops may also invoice for delivery and other miscellaneous fees, charges and overhead recoveries. These fees and charges include, but are not limited to, delivery fees, freight fees, waste fees, environmental fees, handling fees, and "shop supply" charges. These fees and charges are subject to City sales tax and must be included in the taxable selling price.

### **BROADCASTING STATIONS AND OTHER MEDIA**

The purchase of tangible personal property by broadcasting stations for use in their operations inside the City is subject to City sales tax. Personal property includes, but is not limited to, satellite dishes, transmitting towers and other electronic receiving or transmitting equipment; records, tapes, compact



discs and other recording or playback media; and equipment used in the studio, business office and general station facilities.

Tax must also be paid on the purchase price of promotional and advertising items. The purchase of items for resale would be exempt from City sales tax, provided that sales tax is collected on the price charged to the end user. The sale of on-air advertising spots is not subject to sales/use tax.

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

### **CEMETERIES**

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

Persons constructing above ground burial structures or below ground concrete foundations are deemed to be constructing improvements to real property and must follow the rules set forth herein under "Contractors."

### **COINS AND BULLION**

If any coin or currency is exchanged in the open market at the current exchange rate, then the transaction is not subject to sales tax. If coins, however, are commemorative or otherwise, and the coins, although legal tender in the issuing country and also acceptable as legal tender in other countries, are purchased at rates not reflecting actual currency value (as for numismatic or coin collecting purposes or where the previous metal content of the coins determine their value), then the transaction is the sale of tangible personal property and is subject to sales tax.

Sales of bullion are subject to sales tax. Bullion sold within the City and physically or constructively transferred into the City is subject to the sales tax. If the purchaser, however, paid a sales tax in the city or state in which he took delivery, then he is liable to the City for the difference between the sales tax paid and the City sales tax. Sales of gold and silver commodity contracts are not subject to sales tax unless delivery of the commodity is taken in the City.

### **CONSIGNED MERCHANDISE SALES**

Sales tax must be collected on the retail sale of consigned inventory. The consignee must collect and remit the sales tax to the City. While consigned inventory is owned by the consignor, it is the consignee that actually makes the retail sale and is therefore accountable for tax collection and remittance.

### **CONTRACTOR BILLING – APPLICATION OF TAX**

This section does not apply to Contractors operating under a City of Lakewood building permit where Tax has been prepaid.

- (1) Types of billing and types of contracts can affect the way tax is imposed on a Contractor and/or its customer. The following applies to Contractors that bill their customers on a lump sum and/or time and material basis.

- (a) Time and Materials. A Contractor that invoices separately for labor and materials must have a Sales and Use Tax License and charge applicable City tax on the marked-up price of all materials sold at retail. Labor separately stated on the invoice is exempt from taxation under the Tax Code. The Contractor is liable for Use Tax on the cost of all materials and supplies not separately billed to the customer, as well as on tools and equipment.
- (b) Lump Sum. A lump sum contract does not distinguish between labor and materials; rather, the amount is invoiced together as one total. The Contractor must either pay Sales Tax upon the purchase of all materials, including supplies, prefabricated materials and rentals, used to complete the lump sum contract or, if all such materials are purchased tax-free (wholesale), pay Use Tax directly to the City for all such materials used to complete the contract. The Contractor does not charge to its customer Tax on the lump sum price.
- (c) Completed Units. Completed units, not made-to-order, are tangible personal property that can be purchased at retail as standalone items and do not require significant on-site fabrication labor at the installation location. Examples of completed units include stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made cabinets, storm doors, garage doors, storm windows, screens, sod and similar items.

Contractors selling/installing completed units are considered Retailers and must bill their customers on a time and materials basis and collect from the customer, and remit to the City, Sales Tax on all tangible personal property used to complete the contract, including all materials, supplies, prefabricated materials and rentals.

Repairs and maintenance of completed units are not repairs to real property and must be billed on a time and materials basis.

- (1) Governments, Schools and Charitable Organizations. Construction materials purchased by Contractors for construction work on property owned by the United States Government, State of Colorado, charitable organizations having a Lakewood Certificate of Exemption, schools not held or conducted for private or corporate profit, and political subdivisions are exempt from sales or use tax. For charitable organizations, only those construction materials purchased *after* receiving a Certificate of Exemption will be exempt. The City will provide an exemption letter to the Contractor for a qualifying project upon request.
- (3) Sales and Use Tax Returns.
  - (a) Lump Sum Billers. Contractors that invoice on a lump sum basis are not required to file Sales Tax returns, but may be liable to the City for Use Tax. Such Contractors located within the City must remit Use Tax to the City on materials and supplies upon use in a job or in fulfillment of a contract, when initially purchased tax-free (wholesale) and for which an exemption certificate has not been obtained.
  - (b) Time and Materials Billers. Contractors that invoice on a time and materials basis must file Sales Tax returns and may also have Use Tax liability to the City. Such Contractors located within the City must remit Use Tax to the City on materials and supplies not separately billed to the customer unless an exemption certificate for the customer has been obtained.
- (4) Licenses. Contractors that invoice on a time and materials basis must have a Lakewood Sales and Use Tax license. Contractors located within the City that invoice on a lump sum basis must have a Lakewood Sales and Use Tax license.

- (5) Subcontractors. Subcontractors are treated as Contractors for the purposes of this Special Regulation.

## **COUPONS**

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

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

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

When a coupon, gift card or similar instrument provided to a customer for in-store use is a form of payment, such instrument is deemed to be a manufacturer coupon. "Form of payment" means the instrument is not a discount to or for any specific item, is not redeemable for cash, and when items purchased with such instrument are returned to the store, the dollar amount of the purchase made with such instrument is returned to the customer only as in-store credit, store gift card or similar.

The sale of coupon books or cards to the general public is not a taxable transaction. The publisher of the book must pay sales/use tax to the printer based on the cost of the books or cards.

## **DENTAL LABORATORIES AND DENTISTS**

Dental laboratories and dentists engaged in business in the City must obtain a sales and use tax license. Dentists who have monthly retail sales of less than three hundred dollars (\$300) may request to make returns and pay taxes at intervals not greater than every three (3) months. Dentists who do not have retail sales may request to submit use tax returns on an annual basis, covering all purchases of equipment and supplies upon which sales tax has not been paid. Annual use tax returns must be filed even if the use tax liability is zero.

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

Items subject to tax include, but are not limited to:

- general business equipment
- hand instruments and other items used for patient care
- dental equipment and furnishings
- supplies used for patient diagnostic records
- supplies and materials that do not become constituent parts of a prosthetic device
- samples purchased by the dentist and provided to patients

Items exempt from tax include, but are not limited to:

- supplies and materials that become a constituent part of a prosthetic device to be resold to a dentist
- prosthetic devices sold to a dentist
- gold, silver and other materials used for fillings
- orthopedic dental devices or appliances intended to treat or reconstruct skeletal or dental issues, including mouth guards and night guards, when manufactured, altered or adjusted to fit a particular patient and prescribed by a licensed practitioner of the healing arts.

## **DONATIONS**

A retailer or manufacturer who purchases tangible personal property for the purpose of donating it to a charitable organization must pay sales or use tax on the purchase (and cannot claim the charitable organization's exemption). Such retailer or manufacturer cannot claim a resale exemption by asserting that the property was donated, and not resold, to the charitable organization.

A retailer or manufacturer who initially makes a wholesale (exempt) purchase of an item for resale (*e.g.*, retailer buys an item for its inventory it plans to resell it) and later withdraws the item from inventory and donates it to a charitable organization is subject to use tax on the withdrawal from inventory.

## **EATING AND DRINKING ESTABLISHMENTS**

Tax must be collected by eating and drinking establishments whether the food is eaten at the establishment or off its premises. Sales tax must be separately stated on the bill or invoice of the service establishment, with the exception of vending machines and drinking establishments selling drinks by the glass which may include tax in the selling price.

*Caterers.* Caterers and other persons similarly engaged are liable for sales tax on the total selling price for items sold and/or charges for services essential to providing meals and beverages. If tables, chairs, linens or similar items are leased, such items are subject to tax pursuant to section 3.01.420(J) of the Tax Code. Where catering services, including food, are sold as a package, the entire purchase price of the services is taxable.

*Delivery charges.* Delivery charges to deliver taxable items are taxable, even if separately stated.

*Employee meals.* Private enterprises, such as commercial and manufacturing companies, and public agencies, such as governmental organizations, regularly serving and charging their employees or the public for meals and beverages are liable for sales tax based upon the selling price of such meals and beverages. Meals provided to employees at no charge and are considered as part of their salary, wages, or income are exempt from sales and use tax.

*Fundraisers.* When an eating and drinking establishment donates to charity any portion of the price charged to the customer for a meal, tax is imposed, and shall be collected and remitted to the City, on such price charged. Eating and drinking establishments serving fund-raising meals priced in excess of the regular purchase price are liable for sales tax on the regular selling price.

*Disposable and non-disposable products.* The retailer of meals and drinks must pay the tax on purchases of most products used or consumed in the operation of its business, including fixtures, linens, silverware and glassware. Plastic and paper products such as towelettes, napkins, soda straws, plates, knives, forks, spoons and cups are specifically exempt from sales tax if: such items become the property

of the consumer along with the food, no charge for such items is made and sales tax is paid on the food. (Sections 3.01.430(G)(4) and (5)).

*Coupons.* When a customer purchases one meal and receives another meal free as a result of presenting a coupon issued by the restaurant, sales tax applies only to the actual amount charged. However, tax applies to the full (non-discounted) price of the meal when an entity other than the restaurant issues a coupon or similar chit for a price reduction or free meal.

*Complimentary food and drink.* Food and drink provided by the establishment at no charge to the customer is subject to use tax on the cost to the establishment. This shall include promotional items or items provided as reparation for sub-standard food or service.

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

### **FABRICATING, PRODUCING AND PROCESSING**

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

Fabrication/manufacturing labor is subject to sales/use tax. The Lakewood Municipal Code (Code) includes fabrication/manufacturing labor in the definition of "Price" or "Purchase Price" at section 3.01.230: "The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all of the materials used, labor and service performed, and the profit thereon."

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

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

### **FACTORY-BUILT HOUSING**

- (1) Any Factory-Built Housing where a Lakewood building permit is required shall be subject to section 3.01.450 of the Tax Code.
- (2) Any Factory-Built Housing for which a Lakewood building permit is not required (other than for utility hook-ups, etc.) shall be subject to the following:
  - (a) Lump Sum Contracts. A lump-sum contract for the construction of fixtures to real property is treated as a contract for services, and the contractor providing those services is treated as the end user and consumer of the tangible personal property used to construct such fixtures. This means that a builder who uses a lump-sum contract

with the homeowner must pay sales tax to the manufacturer on fifty-two percent (52%) of the purchase price the builder paid to the manufacturer. If, after the builder purchases the manufactured home from the manufacturer, the builder purchases additional materials to perform finish work on the manufactured home, then the builder pays sales tax (or use tax) on the entire purchase price for those materials. The homeowner is not liable for any sales or use tax.

- (b) Time and Materials Contracts. If the builder uses a time and materials contract with the homeowner, then the builder is not treated as the ultimate consumer of the manufactured home but, instead, is treated as a retailer who resells the home to the homebuyer. The builder's purchase of the manufactured home charged by the manufacturer is an exempt wholesale purchase for resale and the subsequent sale by the builder to the homeowner is subject to sales tax. The tax paid by the homeowner is calculated on fifty-two percent (52%) of both the price charged by the manufacturer to the builder and the markup, if any, on the manufacturer's price charged by the builder to the homeowner. For materials that were not purchased from the manufacturer but purchased by the builder to complete the finish work (*e.g.*, plaster to finish drywall seams), sales tax is calculated on the full price charged by the builder to the homeowner for such materials.
- (3) Materials Not Part of the Factory-Built Housing. Materials that are not part of the manufactured home are taxed on one hundred percent (100%) of the price for such materials. For example, sales tax (whether paid by the builder that uses a lump-sum contract or paid by the homeowner under a time and materials contract) applies to the entire purchase price of materials to construct the foundation, to bring electricity and other utilities to the home, kitchen appliances and window coverings are not considered part of the Factory-Built Housing.

### **FEDERAL AREAS, SALES ON**

Sales on federally owned land are subject to City sales tax, except when made to the U.S. government, as set forth in 3.01.430(D)(1); provided, however, sales to authorized persons as defined in 4 U.S.C. 107 are not subject to sales tax.

### **FIDUCIARIES**

Trustees, receivers, executors, or administrators who, by virtue of their appointment by a State or Federal court, operate, manage, or control a business engaged in buying and selling tangible personal property, including the liquidation of assets of a bankrupt, insolvent, or deceased person, must acquire a sales tax license in the fiduciary's name and otherwise meet the collection and reporting requirements of Chapter 3.01.

### **FINANCIAL INSTITUTIONS**

Banks, savings and loan associations, and similar financial organizations who offer gifts or premiums of tangible personal property as an inducement for opening an account, making a deposit or adding to an account are, for purposes of Chapter 3.01, making sales of tangible personal property (see (1) below) or are making taxable purchases (see (2) below).

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

- (1) The sales of these premiums and gifts at their reduced price are treated as retail sales and the financial institutions must collect the sales tax from the depositor.
- (2) The difference between the bank's purchase price and the cash price paid by the depositor shall be taxable to the financial institutions.
- (3) If an item is given to the depositor in consideration of depositing funds or using other financial services from which the bank may profit, the item's purchase price (cost) will be reported as a taxable sale on the appropriate line of the sales tax return.

### **FREIGHT, DELIVERY AND TRANSPORTATION**

Transportation or delivery charges are subject to tax. This includes, but is not limited to, freight charges, delivery charges and other like charges to transport tangible personal property. When other charges are not separately stated on the invoice and are commingled with delivery charges, such as set-up and handling charges, they would also be subject to tax. The Code includes these charges in the definition of "Price" or "Purchase Price" in section 3.01.230.

The freight charges are considered a part of the negotiated purchase price to the vendor. Therefore, freight, delivery or transportation charges billed by the vendor are subject to tax.

A contract between a delivery company and the purchaser of tangible personal property would be exempt from tax, provided that the purchaser pays the delivery company directly and the delivery charges do not appear on the seller's invoice. The freight charges would not be considered part of the negotiated purchase price. This would be considered a non-taxable service contract.

### **GAS AND ELECTRIC SERVICES**

Gas and electric services, whether furnished by municipal, public or private corporations or enterprises, are taxable when furnished for domestic and commercial consumption, but are not taxable when sold for resale or for any of the uses set out in Section 3.01.430(H) or when subject to any of the general exemptions of Chapter 3.01.

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

### **GIFT CERTIFICATES**

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

### **GIFTS, PREMIUMS AND PRIZES**

Purchases of tangible personal property for use as gifts, premiums or prizes for which no valuable consideration is received from the recipient are subject to sales tax on the total purchase price. The purchaser is deemed to be the user and consumer of such property. Examples would be gifts given to all individuals who attend a time-share real estate presentation, regardless of whether the individual buys or invests in the proposals. If the property is purchased from a licensed City retailer, all applicable sales tax should be paid to the retailer upon such purchase.

Any person purchasing tangible personal property to give away in any manner without contingencies is a user or consumer and is liable for the tax thereon. Such property includes advertising gifts and articles given as prizes, premiums, or for goodwill.

If a legally imposed municipal sales tax was not collected at the time of purchase, then use tax is due.

Vehicles claimed as gifts between family members that are truly gifts without consideration are not subject to sales tax. However, assumption of a debt (lien) between family members is consideration and subjects the transaction to sales tax. The taxable value of the vehicle would be the debt plus any other consideration given. See also Regulation 3.01.420(C).

The donor and the recipient are considered family members if one of the following relationships exists: spouse, parents, grandparents, child, grandchild, brother or sister. Claimed gifts between parties not included in these family relationships are presumed to be with consideration and subject to sales tax. The exchange of a vehicle is taxed at fair market value as determined using the Kelly Blue Book average wholesale value. If unrelated parties insist the change of ownership is a bona fide gift, without consideration, the new owner may appeal to the Sales Tax Division for review and evaluation. If the claimed gift is in fact a gift without consideration, the transaction is not subject to tax.

### **HOTELS, MOTELS AND OTHER LODGING SERVICES**

Such supplies as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, coffee and other items available for guests in their room are considered part of the purchase price of the lodging service and are not subject to sales or use tax at the time of purchase by the hotel or motel. This exemption is based on resale of these consumables in a taxable transaction and does not apply to rooms rented continuously for over thirty days that are not subject to sales tax under Chapter 3.01.

Linens, furniture, pool equipment and supplies, and similar items are subject to sales or use tax at the time of purchase by the hotel or motel. Any items offered to guests outside of their rooms, including but not limited to continental breakfast, coffee, drinks, snacks, etc., is subject to sales tax at the time of purchase by the hotel or motel. If a legally imposed municipal sales tax was not collected at the time of purchase, then use tax is due.

If a hotel or motel operates a restaurant or lounge, see the rules set forth herein under "Eating and Drinking Establishments."

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

*Fees.* Cancellation charges, forfeited deposits and similar charges for cancelling a reservation or failing to check-in on time or at all are subject to sales tax. Other taxable fees include, but are not limited to, pet, early or late departure, rollaway bed, and additional persons.

### **ICE**

Ice sold for home consumption is exempt from sales tax.

Sales of ice to other sellers of ice or to sellers of soft drinks for use as a component part of a drink are wholesale sales and, therefore, are not subject to sales tax. If ice is used for the sole purpose of becoming an ingredient or component of the finished product, as when it is used solely to supply all or a



part of the water content of the sausage and luncheon meats, the sale of the ice is a sale for resale and is not subject to sales tax. If not purchased for these purposes, and the purchase is not otherwise exempt, as in the case of a purchase for resale, then the purchase is subject to tax.

Persons selling ice to manufacturers, carriers, or any other consumer for the purpose of cooling or keeping perishable items or property or for other uses are making taxable sales.

### **INITIAL USE OF PROPERTY**

Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase, even though the item might be resold later in either its original or altered form. A tax-free purchase is taxable in full at the first time it is used by the purchaser for a nonexempt purpose.

Examples:

1. Electronic devices such as television sets, audio equipment, mobile phones, gaming systems, computers and similar items available for customers to handle, use, play, experience, experiment with, test, try out, etc., whether or not eventually sold, are subject to sales or use tax on the initial purchase.
2. Ceiling fans, light fixtures, doorbells and similar items when affixed to walls, ceilings, overhangs, displays, etc., for purposes of use or display at a retailer's business, whether or not eventually sold, are subject to sales or use tax on the initial purchase.
3. A junkman may not buy a new car tax-free under the theory that the car is going to be junked someday and resold through his business for scrap.

### **INSURANCE COMPANIES**

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

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

### **JANITORIAL SERVICES**

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

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

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

### **LEASED DEPARTMENTS IN RETAIL STORES**

Leased departments in retail stores are separate and distinct stores, just the same as if the various businesses conducted in such departments were conducted in separate and distinct buildings. The fact

that the various departments are in one building or on one floor of a building does not alter the fact that ownership and control of merchandise is different in each leased department. Where a store has leased departments to persons for retail sales of tangible personal property, each leased department shall make separate monthly sales tax returns. The lessee shall keep his own books and make his own sales tax collections on retail sales. If the lessor store keeps the books for the lessee departments and makes collections for their sales, then the lessor store shall make separate sales tax returns for such departments and shall pay the taxes due thereon, but the lessee is not relieved of his ultimate liability under Chapter 3.01 if the lessor store fails to make the proper sales tax returns or to remit the taxes to the Chief Financial Officer.

### **LINEN SERVICES**

A linen business's purchase of linens, including but not limited to, uniforms, tablecloths, rugs and other textiles to be provided as part of the service, is exempt from tax as a wholesale purchase. Other items used in the performance of the service, such as soaps, starch, cleaners, hangers, bags, wrap, twine, or other consumables items are taxable to the linen company on the purchase price.

For purposes of taxation to the customer, the only non-taxable service a linen business provides is the cleaning and mending of linens or other tangible personal property not owned by the linen business. All other services where the linen business owns the property being provided are considered taxable rentals of tangible personal property. The entire charge for such rentals, inclusive of cleaning and mending charges, is subject to tax.

### **MAINTENANCE, RENOVATION AND DECORATING SERVICES (NON-STRUCTURAL)**

Persons engaged in the business of rendering non-structural maintenance, renovation and decorating services, such as painters and paper hangers, floor waxing services, resurfacing and others under a maintenance or service contract are rendering a service and are considered the users of the articles purchased and are subject to tax on such articles at the time that they are purchased.

No sales or use tax is applicable to the charges made for these services.

### **MANUFACTURERS AND PREFABRICATORS ACTING AS CONTRACTORS**

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

If a manufacturer or prefabricator builds materials into real property, and title to the materials does not pass until incorporated in the real property, then the manufacturer is a contractor contemplated in the Special Regulation for "Contractors" and must follow such Special Regulation.

### **MORTICIANS AND FUNERAL HOMES**

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

1. If a funeral service is contracted for in one lump sum, with no itemizations, sales tax shall be imposed on the entire amount.
2. If a funeral service is contracted for in such a manner that the charges for such tangible personal property as caskets, urns, vaults, shipping boxes, clothing, floral items and similar tangible personal property, are separately stated from the charges for such services as music, police escort, clergy honorarium, and similar services, then sales tax shall be imposed only upon the selling price of such tangible personal property.

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

Tangible personal property that is purchased and that is not to be resold in the normal course of business is subject to tax at the time of purchase. Tax-free purchases for resale, when removed from inventory and used in the regular course of a mortician's business, must be included in the Lakewood tax return for the month in which such articles are removed from inventory.

### **NEWSPAPERS, MAGAZINES AND OTHER PUBLICATIONS**

Newspapers, as defined in Section 3.01.230 of the City Code, are exempt from sales and use tax, whether delivered on newsprint or accessed digitally. The term "published regularly at short intervals," as stated in the definition of newspapers, shall mean published at least once each week.

A publisher who only makes sales of newspapers is not required to obtain a sales tax license. The publisher shall pay sales tax upon all purchases of tangible personal property except newsprint and printer's ink used in the production of the newspaper products. If the newspaper publisher makes retail sales of other articles delivered in the City, then it shall obtain a sales tax license and collect sales tax and may purchase such articles tax-free for resale.

Magazines, periodicals, trade journals and similar items are tangible personal property whose retail sale is subject to sales tax. If such publications are printed and sold within the City, including subscriptions for such publications, whether or not accessed digitally, then the price is subject to sales tax. If the publication is printed in the City and delivery is made outside the City, then the sale is not subject to sales tax.

Trade journals, advertising pamphlets, circulars, etc. which are to be distributed free of charge and are distributed by means of house-to-house delivery are not exempt from sales tax. "Distributed free of charge" does not include publications that are provided as part of a paid membership. Organizations which produce and distribute free trade publications, and similar items, are deemed to be purchasers for their consumption, and such items are subject to sales tax based on the purchase price of the tangible personal property consumed.

Purchasers of a paid membership who receive trade journals, magazines, etc. as part of such membership are responsible for the sales tax on the publication. If the membership and publication are not separately stated, sales tax shall be due on the entire amount paid for the membership.

Sales tax must be paid to the printer by the advertiser/organization at the time that such items are prepared by the printer. If such items are purchased outside the City, and no sales tax has been paid thereon, then the advertiser must pay the City's use tax on such items.

## **OPTICAL SALES**

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

Add-ons, including but not limited to non-prescription coatings such as scratch resistant, UV protection and glare reduction coatings, should be separately stated and are subject to sales tax.

Such articles not dispensed under a qualified prescription are subject to sales tax.

## **PHOTOGRAPHERS, PHOTOFINISHERS AND X-RAYS**

Photographers and photofinishers are primarily engaged in the business of selling tangible personal property to their customers, and such sales are subject to sales tax. Purchases of materials that become ingredients or component parts of the finished picture, such as mounts, frames and sensitized paper, are not subject to sales tax because such items are purchased by the photographer or photofinisher for resale. Conversely, purchases of materials that do not become a part of the product sold to the customer are taxable to the photographer or photofinisher. Mounted negatives sold by photographers and photofinishers are subject to sales tax on the total price charged on negative and mount. Only the sale of developed negatives, such as movie film, would be exempt from sales tax.

The charge made by photographers and photofinishers for only the development of film is a service charge and is not subject to sales tax. If individuals deliver their own pictures to photographers for tinting or coloring, then the transaction is a service and is not subject to sales tax. If prints made from developed negatives are sold to a customer, then tangible personal property has been sold, and the selling price is subject to sales tax.

Physicians, surgeons, dentists, hospitals, X-ray laboratories and others who purchase X-ray film and then expose it for the purpose of diagnosis are considered the consumers of the X-ray film. Consequently, tax applies to the purchase of all materials and supplies used to expose and develop the finished X-ray film. These materials include, but are not limited to, film and chemicals.

## **PRINTERS AND PRINTING**

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

If separately stated on the invoice, the services of typesetting, color separation, design, and art and camera mechanicals performed by a printer or its subcontractor for a customer or another printer are not subject to sales or use tax.

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

Printed matter that is partially printed, invoiced to the customer, held in stock for further imprinting, and finally invoiced for subsequent imprinting is subject to sales tax on the full price charged by the printer

for the item. Sales tax must be collected on the selling price of each part of the job. The subsequent imprinting before delivery is deemed to be completion of the initial sale and not a separate transaction.

Exempt purchases of tangible personal property for resale include:

- (1) **Paper:** Newsprint, stock on which the finished product is printed and delivered to the customer, and wrapping materials for finished products sold to customers.
- (2) **Ink:** Printer's ink, ink additives, and overprint varnishes.
- (3) **Chemicals:** Anti-offset sprays, fountain etch solutions, gum solutions, and all component chemicals when used with the above materials.
- (4) **Materials:** Padding compound, stitching wire and staples, and bookbinder's tape.
- (5) **Pre-press preparation materials:** Light sensitive film, plates and proofing materials. Such exemption shall be allowed upon compliance with the procedures stated below.

Printers who are merely performing a service shall be subject to the Special Regulations relating to "Service Enterprises." Printer's ink and newsprint are exempt under Section 3.01.430(M), but all other above listed items are subject to use tax when applied to property which is not sold or incorporated into the final product.

Pre-press preparation materials (which shall be defined as light sensitive films, plates, and proofing materials) shall qualify as exempt purchases of tangible personal property to the extent that such items are utilized for the production of a specific product for a specific customer, and title passes to the customer as part of the total sale, and adequate cost records for the particular job showing amount of prepress preparation material are retained by the printer. If separately invoiced as herein provided, pre-press preparation materials used in the production of a product sold and delivered to a tax-exempt entity will not be deemed subject to the payment of use tax by the printer.

The printer must maintain adequate records of pre-press preparation materials not sold or incorporated into the final product in detail as to each specific job, so that the indication of pre-press material designation on the ultimate billing can be determined upon audit and segregated from other pre-press materials, manufacturing aids or plant property. There must be an audit trail that clearly reflects the passing on to the customer of a particular item of pre-press preparation material and collection of sales tax on a particular invoice when such sales are subject to tax.

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

## **PRIVATE CLUBS**

Sales of tangible personal property and taxable services at retail by private clubs, such as country clubs, athletic clubs, fraternal organizations or organizations of persons formerly in the armed services of the United States, are subject to tax. Such transactions are taxable even when the transactions are with club members. Private club memberships are not taxable.

## **READY-MIX CONCRETE**

Ready-mix concrete is subject to sales tax on the delivered price, which includes minimum load and transportation charges. (See sec. 3.01.420 of the Tax Code.) Standby charges charged after arrival at the destination are not taxable if segregated on the customer's invoice.

## **REPOSSESSED PROPERTY**

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

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

- (1) The repossessed property is a motor vehicle. However, a deduction may be allowed when there is a seller-financed sale. See CRS 39-26-113(6);
- (2) The retailer-reposessor reports sales tax on the cash basis; or
- (3) The retailer-reposessor reports sales tax on the accrual basis but elects, consistent with Regulation 3.01.230 for "Taxable Sales," to report on the cash basis the collections of such credit sales as that subject to repossession.

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

## **SAND AND GRAVEL**

Sand and gravel removed from the ground becomes tangible personal property and are subject to the sales or use tax that applies to retail sales of tangible personal property. Sales of sand and gravel are taxable unless sold to a licensed retailer for resale.

Tax must be imposed on the delivered price of sand and gravel, including minimum load and transportation charges, in accordance with the provisions of Regulation 3.01.230 for "Price" or "Purchase Price." Stand-by charges made after arrival at the destination are not taxable if segregated on the customer's invoice.

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

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

## SERVICE ENTERPRISES

Business engaged in rendering a service are generally consumers rather than sellers of tangible personal property. Tangible personal property which is incidentally transferred with the service to the customer is taxable to the service provider, not to the customer. Service businesses that also sell tangible personal property or taxable services must collect sales tax on these sales. If the charge for service is not separately stated from the charge for tangible personal property, the entire amount is subject to sales/use tax.

To determine if a transaction is a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service, one must look to the true nature of the transaction. If the transaction is for advisory services, record keeping, payroll, architectural, tax and like services and the tangible personal property is forms, binders, blueprints, reports or other like property, the tangible personal property is incidental to the performance of the service and, therefore, taxable to the service provider, not the customer. If the purchaser's primary interest is in the physical property of the item purchased, the item is subject to sales/use tax when sold.

Copies sold of the tangible personal property incidental to the performance of a service are subject to sales/use tax. The transfer of the original manuscript by an author to the publisher for the purpose of publication is not subject to sales/use tax. However, the sale of printed copies of the author's book would be subject to sales/use tax.

Sales/use tax would apply to the sale of artistic expressions in the form of paintings, photographs, sculptures and similar artwork, even though the work of art may express an original idea. Generally custom-made items are subject to sales/use tax, with the exception of an original prototype. The materials used to make original prototypes are subject to sales/use tax. The purchaser's primary interest in custom-made items is in the physical property of the item being purchased. Therefore, they are taxable when sold.

The development of information in a research and development contract is not a sale of tangible personal property in the form of a prototype, model, plan, design or like items. Rather it is a contract for information which is an intangible service that cannot be conveyed orally and can only be conveyed via tangible personal property, which is incidental to the service. The materials used to make the prototypes, models, plans, design and like items are subject to sales/use tax to be paid by the service provider. Any copies or additional prototypes and models would be subject to sales/use tax when sold.

When the transaction is determined to be the sale of tangible personal property, sales tax would apply to the full sale price for the item. Deductions are not allowed for labor, management, thought, time or other separately stated items.

### Examples:

1. An architectural design firm contracts with a land developer to design a subdivision. The architect transfers blueprints and a 3-D model of the development. The developer requests two additional sets of blueprints and two additional models for his two partners. The original set of blueprints and 3-D model are not taxable to the developer, because they are incidental to the service; but the materials used to make them are taxable to the architect. The additional two sets of blueprints and models are taxable to the developer because they are copies.
2. A law firm contracted with an artist to design and build a sculpture for the firm's lobby. The artist's invoice read: materials \$500.00, design work \$1,000.00 and labor \$2,000.00. The

entire invoice is subject to sales/use tax, even though it is separately stated. A deduction for labor and design is not allowed when the transaction is a sale of tangible personal property.

### **TOOLS, JIGS, DIES, PATTERNS, MOLDS AND SIMILAR ITEMS**

A person who makes and sells tools, jigs, dies, patterns, molds and similar items to a purchaser for use in the purchaser's manufacturing or processing is making retail sales of the articles and is required to collect and remit the sales tax. After using such items, the purchaser may resell them to the customer for whom the purchaser is manufacturing articles. Such resales, however, do not exempt the sale first described above because the purchaser purchased the article primarily for use and not for resale. The resale of the article to a customer after use by the initial purchaser is taxable.

### **UPHOLSTERERS**

An upholsterer engaged in the repair, recovering, upholstering or similar work on a customer's personal property is engaged in the sale of tangible personal property and shall charge its customers sales tax on the tangible personal property used in this service. If the upholsterer separately states the tangible personal property and the service or labor charges on the billing to the customer, then the labor or services charges are not taxable.

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

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

Where an upholsterer purchases personal property, which it upholsters and then offers for sale, the upholsterer is required to charge sales tax on the full selling price of such property. The labor to process and prepare such property for sale to a customer is a taxable part of the transaction of sale.