
Tax Compliance Guide

Construction – Projects for Tax Exempt Organizations Topic 335

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Construction contractors are primarily engaged in the business of combining construction materials to create a completed structure or project. Contractors purchase and manipulate tangible personal property and subsequently convey title to real property. As such, a contractor is the final consumer of tangible personal property and must pay Westminster sales or use tax on the purchase price paid for construction materials.

A contractor may not avoid payment of Westminster sales or use tax by use of the provisions in a construction contract or agreement, or by the use of the name of a tax-exempt entity in an invoice or purchase order as the purchaser. Westminster use tax is due on the cost of materials used by contractors whether or not a permit is required. Contractors are liable for Westminster use tax on materials used even if they are supplied by the tax-exempt entity.

For non-permitted work, credit may be taken against Westminster use tax for lawfully imposed sales or use tax that has been previously paid to Westminster or another city. No exemption certificate issued by the Colorado Department of Revenue or any other taxing authority will be recognized as a basis for exemption from sales or use taxes levied by the City upon construction contractors.

Contractors for governments, qualified hospital organizations, and charitable organizations, who undertake construction projects requiring a building permit, are required to pay applicable use tax on construction materials. This includes projects where the organization acts as its own contractor and purchases construction materials directly. Contractors must present the building permit rather than the entity's *Certificate of Tax Exemption* to avoid local tax when purchasing materials.

For projects requiring a permit, an estimated amount of use tax will be collected based upon the estimated project valuation. If this estimated amount is greater than the actual amount of use tax due at the project's completion, the contractor may apply for a refund of the overpayment amount. If the actual amount due is

greater than the estimated amount pre-paid on the building permit, the contractor must file a *Project Cost Report* form with the Sales Tax Division and remit the difference.

The use tax will not be waived or refunded for projects requiring a building permit even if the organization purchasing the materials or performing the construction is exempt from Westminster sales and use tax under other circumstances.

Examples

1. A local school district contracts with General Contractor A to build a new school in the City. A permit is not issued for the project. General Contractor A must register with the City and file monthly returns reporting and paying use tax on any construction materials used, including materials used by subcontractors or supplied by the school district. If General Contractor A uses construction equipment on the project, they must file a construction equipment declaration on or before the day the equipment is first located in Westminster. Subcontractors must similarly declare equipment and will be liable for any use tax due.
2. General Contractor B contracts with Church X to build a parish in Westminster. Church X holds a valid *Certificate of Tax Exemption* from the City. General Contractor B obtains a certificate of exemption from the Colorado Department of Revenue for the project. General Contractor B also obtains a Westminster building permit. General Contractor B will be required to pay an estimated amount of use tax on the project when obtaining the permit even though Church X is exempt from state and Westminster taxes. General Contractor B, and its subcontractors, should present copies of the Westminster permit in addition to the state exemption certificate when purchasing materials.

At the conclusion of the project, General Contractor B must reconcile the use tax due on the actual cost

of materials used (including those used by subcontractors) with the estimated pre-payment. If the actual use tax due exceeds the pre-payment, the difference must be remitted within 30 days of final inspection or issuance of the Certificate of Occupancy, whichever occurs later. If the actual use tax due is less than the pre-payment, General Contractor B may file the *Project Cost Report*, along with the required documentation, to claim a refund.

It is important to note that, although the purchase of materials will be exempt from local tax by virtue of the permit, the permit should still be presented in addition to the certificate of exemption issued by the Colorado Department of Revenue. Retailers exempting materials purchases from local tax without retaining the permit as documentation could be held liable for sales tax on such materials by virtue of the fact that the state certificate is not an appropriate basis for city tax exemption.

3. A charitable organization recognized by the City as exempt from Westminster sales & use tax decides to remodel their office in the City. The organization elects to complete the project themselves without retaining a general contractor. This project requires a building permit. As such, the organization must pay use tax on construction materials used in the project even though they will be directly purchased and paid for by the organization's funds.

Related Topics

Construction – City Projects

Construction – Equipment

Construction – Projects Not Requiring City Building Permit

Construction – Public & Private Improvements

Construction – Building Permit Handout

Citations

Westminster Municipal Code

§ 4-2-3. Rate; Imposition and Collection; Distribution

§ 4-2-6. Exemptions from Sales Tax

§ 4-2-7. Exemptions from Use Tax

§ 4-2-9. Provisions Relative to Construction Materials

THIS GUIDANCE IS A SUMMARY IN LAYMEN'S TERMS OF THE RELEVANT WESTMINSTER TAX LAW FOR THIS TOPIC, INDUSTRY, OR BUSINESS SEGMENT. IT IS PROVIDED FOR THE CONVENIENCE OF TAXPAYERS AND IS NOT BINDING UPON THE CITY. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE WESTMINSTER MUNICIPAL CODE AND APPLICABLE RULES AND REGULATIONS. THIS GUIDE DOES NOT CONSTITUTE A CITY TAX POLICY.

Contact Us

For additional assistance, please contact us:

City of Westminster
Sales Tax Division
4800 West 92nd Avenue
Westminster, CO 80031

Phone: (303) 658-2065

Fax: (303) 706-3923

E-mail address: salestax@westminsterco.gov

Website: <http://www.westminsterco.gov>
From the Business menu, choose Westminster Taxes