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## Tax Compliance Guide

### Leased & Rented Property Topic 366

(03/2020)

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The *Westminster Municipal Code* includes in the definition of "purchase or sale" any "lease, lease-purchase agreement, rental, or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services". These terms include capital leases, and installment and credit sales. Retailers leasing or renting tangible personal property for use in the City ("lessors") must obtain a Westminster Sales & Use Tax License and collect Westminster sales tax on the lease payments. A purchaser ("lessee") who does not pay a sufficient, legally imposed sales or use tax to a lessor licensed and authorized to collect the same at the time of purchase must remit a use tax directly to the City.

Except in the case of capital leases, lease-purchase agreements, and installment sales (discussed below), Westminster sales/use tax is due upon each lease payment throughout the duration of the lease agreement. If the property is delivered to the lessee outside the City for use in the City thereafter, the first rental or lease period (up to 30 days) is not subject to Westminster sales/use tax. Subsequent periods will be subject to Westminster sales/use tax. The taxable purchase price includes, without limitation, rental or lease charges, operator charges that are not separately stated, charges for delivery/pickup of the equipment, mandatory setup or service charges, environmental fees, property tax charges, certain insurance charges, damage waivers, fuel surcharges, and all other amounts paid to obtain the uninterrupted use of the property under lease.

Westminster sales/use tax does not have to be paid by licensed lessors when purchasing inventory for lease if the property will be held strictly for customer use. The lessor must pay Westminster sales/use tax on property it uses which is also held for lease. Lessors may not avoid the collection of sales tax by paying a sales or use tax upon the purchase of lease inventory.

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#### Capital Leases, Lease-Purchases, Installment Sales

When property is sold under a capital lease, lease-purchase agreement, installment sale, or other conditional sales contract whereby the seller retains title as security for all or part of the price, or whereby the seller takes a chattel mortgage on such property to secure all or part of the price, the full amount of sales tax is due in the period in which the sale was made or upon the first instance of use, storage, consumption, or distribution in the City thereafter. No refund or credit is allowed to either party in the case of repossession. Payment of the tax upon each lease payment throughout the duration of the lease agreement is not permitted. The taxable purchase price includes the sum of all lease payments paid or promised to be paid, down payments, freight, and any additional charges paid to the lessor.

In determining whether a lease is a capital or lease-purchase type lease, the City will try and ascertain the intent of the parties by reviewing agreements between the lessor and lessee and by evaluating the facts and circumstances surrounding the transaction. Factors that may indicate that a lease is a capital lease include, but are not limited to, the following:

- ❖ Title to the property under lease transfers to the lessee at the conclusion of the lease term;
- ❖ The lease includes a bargain purchase option;
- ❖ The lease term is equal to 75% or more of the estimated economic life of the leased property<sup>1</sup>;
- ❖ The present value of the minimum lease payments is equal to 90% or more of the fair value of the leased property to the lessor;
- ❖ The sum of the lease payments exceeds the current fair value of the leased property;
- ❖ The lease agreement includes provisions for interest;
- ❖ The lessee is responsible for maintenance costs, insurance, property taxes, or other costs incidental to ownership;
- ❖ The lessor does not regularly sell, lease, or rent or otherwise maintain an inventory of similar property in the ordinary course of business;

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<sup>1</sup> If the parties are related persons, the City may treat multiple, consecutive, short-term leases as a single lease.

- ❖ The lessee selects the specific property to be leased from a third-party dealer or manufacturer from which the lessor purchases the property;
- ❖ The lessee sells the property to be leased to the lessor (see below); or
- ❖ The lessee records the property as an asset and the expense as depreciation.

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## Sale/Lease Back

When property is sold by a lessee and immediately leased back, with no interim use by the lessor, only the lease back transaction is subject to tax. The sale to the lessor will generally be considered a wholesale sale, because it is for taxable resale. The lease back transaction will normally be a capital lease and the sales tax will be due up-front on the entire purchase price. If the lessee purchases the equipment and sells it to the lessor in an unaltered state, the lessee's purchase will also be a tax exempt wholesale. However, if the lessee uses or otherwise consumes the property prior to selling it to the lessor for lease back, both the lessee's purchase and the lease back will be taxable.

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## Examples

1. Resident is building a fence for his yard and rents a nail gun and compressor from Renter, a licensed Westminster retailer. Renter charges \$100 per day for the rental plus a \$10 damage waiver. Renter must collect Westminster sales tax on both the \$100 rental charge and the damage waiver.
  2. Contractor requires a loader for a construction project in Westminster. They rent a loader from Equipment Rentals, a licensed retailer located in a neighboring city. Contractor picks up the loader at Equipment Rentals' yard. Equipment Rentals charges a \$500 per month rental charge and a \$5 per month environmental fee. Contractor rents the loader for 3 months. Equipment Rentals must collect Westminster sales tax on the full \$505 charge for the second and third months only. The neighboring city's tax, if any, will likely apply to the first months charges.
  3. Owner owns a growing Westminster software company and needs new computer servers for her office. She selects the servers she wants and gives the manufacturer the specifications. The manufacturer builds the servers and sells them to Lessor who, in turn, leases them to Owner. The cost of the servers is \$6,000. The lease term is 36 months with monthly lease payments of \$182. At the conclusion of the lease, Owner may purchase the servers from Lessor for \$1. Because this is a capital lease, Financer must collect sales tax up-front on the sum of the lease payments (\$6,552).
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## Related Topics

Automotive Vehicles  
 "Coin-Operated" Devices  
 Construction – Equipment  
 Credit, Installment, and Secured Sales  
 Linen Rental & Service

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## Citations

*Westminster Municipal Code*  
 § 4-2-2. Definitions  
 § 4-2-3. Rate; Imposition and Collection; Distribution  
 § 4-2-8. Secured Sales Transactions

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.

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## Contact Us

For additional assistance, please contact us:

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