
Tax Compliance Guide

Refund Claims Topic 376

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The *Westminster Municipal Code* requires taxpayers to sign and submit a *Claim for Refund* form in order to receive a refund of a tax overpayment. Overpayments can result from a variety of circumstances. The specific procedures and limitations for obtaining a refund depend upon the nature of the overpayment. All refund claims must include adequate documentation of the claim. In general, such documentation must prove that (1) the tax in question was actually paid to the City; (2) the tax was not due to the City; (3) the claim is timely; and (4) the person making the claim is due a refund of the overpayment. Refund claims cannot be assigned to another person.

Overpayment on a Return

If the amount remitted with a tax return is more than the total tax liability as computed from the information on the return, the City's tax system automatically generates a *Notice of Overpayment*. The notice will show the period covered, the amount of the overpayment, and a description of the error. The notice will also include a *Claim for Refund* at the bottom.

Upon receipt of an overpayment notice, taxpayers should review the return for the period listed to determine if an overpayment was made. If the amount paid was, in fact, correct (there was no overpayment), the taxpayer must file an amended tax return. If the amount paid was, in fact, greater than the tax due (there was an overpayment), the claim must be signed and returned within 30 days of the date of the notice. Unclaimed overpayments will be forfeited after 30 days.

Overpayment Determined through Audit

The Sales Tax Division conducts routine audits of taxpayers to determine whether the correct amount of tax has been reported and paid. If the audit discloses an overpayment, a *Notice of Overpayment* will be issued along with a *Claim for Refund* form. If the taxpayer is in agreement with the auditor's findings, the claim must be signed and returned within 30 days of the date of the notice. Unclaimed overpayments will be forfeited after 30 days.

If the taxpayer believes the actual overpayment is greater than the amount shown in the notice, the taxpayer should submit the claim with the additional amount included, along with supporting documentation. The additional claim amount will be reviewed by the auditor, and a determination will be issued (see below).

Overpayments by Purchasers

Normally, the Code requires the person who actually paid the tax to the City to claim and receive a refund of any overpayment. The Code permits purchasers - who paid the tax to a retailer who, in turn, paid it to the City - to claim a refund directly from the City for a limited time from the date of the purchase. The purpose of this limitation is to prevent duplicate refunds from being issued both to the purchaser and the retailer for the same transaction.

Purchasers who paid tax to a licensed, Westminster retailer, but claim that a sale is exempt from or not subject to tax must submit a *Claim for Refund* within 60 days of the date of the purchase along with adequate documentation of the claim. Claims made more than 60 days after the purchase date will be denied. Beyond 60 days, the purchaser may seek a refund from the retailer, who may then file a claim for refund for up to three years from the date of the return reporting the claimed transaction. Note that, while the Code permits refunds to retailers for up to three years, retailers may establish their own timeframes that may be shorter. The Sales Tax Division cannot obligate a retailer to refund tax paid in error.

Refunds to Retailers

Licensed retailers collect sales, admissions, and accommodations taxes on the City's behalf and hold it in trust for the sole benefit of the City. Retailers are not permitted to retain any tax collected in error from any purchaser. Such excess tax must be refunded to the purchaser or reported and paid to the City.

Retailers are encouraged to refund tax overpayments to purchasers, as the purchaser only has a limited time to seek refund directly from the City (see above). A retailer may submit a *Claim for Refund* for up to three years after the due date of the return reporting the transaction. Such claim must include adequate documentation.

Refunds to retailers will not be allowed unless the 60 day time for purchasers to claim a refund has expired. As part of the claim, the retailer must document that the tax has been refunded to the purchaser or credited to the purchaser's account. Retailers can request contingent approval of a refund claim in order to mitigate the risk of issuing a refund to the purchaser that is ultimately denied by the City.

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 file a *Claim for Refund* form to obtain a refund of the claimed overpayment. Retailers are not permitted to take 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 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.

Construction Materials Use Tax

For most projects in the City, the general contractor is responsible for the use tax due upon construction materials used to build, reconstruct, alter, or improve land or improvements to land. Such materials include those used by sub-contractors or furnished by the owner. The general contractor’s liability is not altered if a building permit is not issued for a particular project.

Most commonly, the general contractor will make an estimated pre-payment of use taxes. This occurs when a building permit or direct payment permit is issued for construction within the City. Such permits must be used by the contractor and any sub-contractor when purchasing materials to avoid being charged local sales tax. Contractors are also permitted to elect the “actual cost method”, and file monthly returns of the actual use taxes due.

Project Reconciliation

When electing the estimated pre-payment method, the general contractor must determine the actual cost of all materials used at the conclusion of the project. The actual use tax due is computed based upon such cost. If the actual use tax due is less than the estimated pre-payment, the general contractor may complete a *Construction Project Cost Report* and submit it to claim the overpayment.

The claim must be submitted within three years of final inspection, written acceptance, or the issuance of a *Certificate of Occupancy* depending upon the specific procedure required for the project. The claim must include documentation supporting the actual cost, including documentation showing the cost of materials used by sub-contractors and materials furnished by the owner.

Accounting for Overpaid Sales Taxes

When reconciling the actual use tax due with the estimated pre-payment (or computing the monthly use tax due for the actual cost method), the general contractor is not allowed to take credit against the use tax due for sales tax paid upon the materials used unless all of the following conditions are met:

1. The sales tax was Westminster sales tax paid to a licensed, Westminster retailer;
2. The general contractor paid the sales tax directly; and
3. The purchase occurred within 60 days of the date the *Project Cost Report* is actually filed.

If the sales tax was paid to a vendor collecting on behalf of another city, the general contractor will need to contact the vendor or such other city about obtaining a refund. Taxes paid (including properly collected state, RTD, and county taxes) should not be included in the computation of the cost of materials.

If the sales tax was paid by a sub-contractor or by the property owner, the party who, in fact, paid the tax must seek a refund (see “Overpayments by Purchasers” above). Because there is a 60 day statute of limitations for refunds by the City directly to purchasers, the general contractor is not permitted to offset transactions occurring more than 60 days in the past. The materials must be included in the actual cost computation, and the general contractor will have to seek a refund through the retailer.

Review and Determination

Depending upon the complexity of the claim, review of completely documented claims can take as little as 7 days or as many as 90 days. If additional information or documentation is needed, you will be contacted by the City official reviewing the claim.

If the claim is approved, a check will be issued to the claimant within 14 days of approval. Claims for less than \$25 are refunded only by petty cash, which can be received at City Hall during business hours. If the claim is denied, in whole or in part, the claimant will receive written notice of the denial. The denial of a refund can be protested within 30 days of the date of the notice in accordance with the Code and applicable rules and regulations.

Related Topics

Bad Debts
Construction – Use Tax Reconciliation
Disputed Tax & Burden of Proof

Citations

Westminster Municipal Code
§ 4-1-3. Deductions & Credits
§ 4-1-6. Trust Status of Tax in Possession of Retailer
§ 4-1-14. Overpayments from Returns
§ 4-1-15. Tax Overpayments Determined through Audit
§ 4-1-16. Overpayments by Purchasers
§ 4-1-17. Claim for Refund
§ 4-1-36. Statute of Limitations
§ 4-1-25. Protest of Notice of Assessment or Denial of Refund
§ 4-2-9. Provisions Relative to Construction Materials
Rules Governing Hearings before the Finance Director

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.