

**DEPARTMENT OF REVENUE**

**CITY AND COUNTY OF DENVER**

**TREASURY TAX RULES**

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**Table of Contents**

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[RULES REGARDING THE ASSESSMENT AND COLLECTION OF SALES AND USE TAXES ON THE SALES AND USE OF NEWSPAPERS AND OTHER PUBLICATIONS](#)

TTR001 04/1982

[RULES IMPLEMENTING THE EXEMPTION FOR CERTAIN FOOD AND DRINK UNDER THE CITY RETAIL SALES AND CITY USE TAX ARTICLES OF THE DENVER REVISED MUNICIPAL CODE](#)

TTR002 10/1988

[RULES GOVERNING ACCESS TO RECORDS OPEN TO INSPECTION OR COPYING UNDER THE COLORADO REVISED STATUTES AND THE ORDINANCES OF THE CITY AND COUNTY OF DENVER.](#)

TTR003 7/1990

[RULES RELATING TO THE FREQUENCY OF PERIODIC SALES AND USE TAX RETURNS](#)

TTR 004 10/1993

[RULES REGARDING THE ASSESSMENT AND COLLECTION OF SALES AND USE TAX ON SALES AND USE OF TANGIBLE PERSONAL PROPERTY ACQUIRED BY CONSTRUCTION COMPANIES.](#)

TTR005 9/2001

[RULES REGARDING PREVIOUSLY PAID SALES OR USE TAXES.](#)

TTR006 12/2001

[RULES GOVERNING HEARINGS BEFORE THE MANAGER OF REVENUE.](#)

TTR007 01/2002



# **CITY & COUNTY OF DENVER, COLORADO**

## **DEPARTMENT OF REVENUE**

### **TREASURY TAX RULE 001**

#### **RULES REGARDING THE ASSESSMENT AND COLLECTION OF SALES AND USE TAXES ON THE SALES AND USE OF NEWSPAPERS AND OTHER PUBLICATIONS**

EFFECTIVE 4/25/1982

The following rules and regulations are promulgated in accordance with the requirements of Article 123 of the *Denver Revised Municipal Code* (1950 compilation, as amended), and by virtue of the authority vested in the Manager of Revenue by Articles 166 and 166A (Article III, Section 53) of said Code.

- 1) The sale and purchase, or use, of all written publications, including newspapers, magazines, catalogues, books, directories, maps, newspaper clippings and mailing service or listings, revision services, and trade journals, are subject to taxation under the City Retail Sales Tax Article, Article 166, (Article II, Section 53) of the Denver Revised Municipal Code, or the City Use Tax Article, Article 166A (Article III, Section 53) of the Denver Revised Municipal Code. Sales-for-resale of such publications to vendors a) who are licensed as retailers pursuant to said Sales and Use Tax Articles and the General Licensing Provisions of the Denver Revised Municipal Code, and b) who sell such publications to purchasers from commercial locations, such as places of retail business or vending machines, shall be considered to be wholesale sales. All other sales by publishers or vendors of such publications shall be presumed to be retail sales on which the publisher or vendor must collect and remit the sales tax, or, in the case of a publisher outside the city, after which a use tax must be paid on the privilege of use of the publication in the city. The presumption may be rebutted by such reasonable proof as the Manager deems adequate.
- 2) Sales of newspapers by publishers or licensed retailers to independent news carriers or other independent distributors who are neither licensed as retailers by the city nor selling their publications from commercial locations shall be presumed similarly to be sales at retail and taxable transactions. The tax in such cases shall be measured by the purchase price paid by the news carrier or distributor to the publisher or licensed retailer. The term

“news carriers” as used herein shall mean those persons delivering or hawking newspapers on regularly established routes or at random locations.

- 3) In cases in which a publication is delivered or sent to a subscriber in the city as a result of a subscription to the publication being sent to a publisher located outside the city, but having commercial and tangible contacts with the city, the use of the publication within the city is subject to the use tax, and the publisher is required to obtain a City Retail Sales License and collect the tax and return it to the city. If, however, the publication is printed in the city and delivery is made outside of the city by mail, common carrier, or the publisher’s truck, the transaction is not taxable.
- 4) The distribution of newspapers, trade journals, advertising pamphlets, circulars, leaflets, and similar items, which are distributed free of charge by any means, such as car-to-car or house-to-house delivery, or by being included in and distributed as part of a newspaper, are exempt from the sales and use taxes. However, a tax must be paid by the advertiser or distributor, or whoever pays for the preparation and printing of the publication, because the advertiser, distributor, etc., is presumed to be the user and consumer of the publication after the retail sale thereof. If the printer is licensed as a retailer by the city, the tax must be collected by the printer. If the printer is not licensed by the city, the purchaser must pay the tax to, and file a Consumer’s Use tax return with the city directly.
- 5) Publishers or printers of circulars, trade journals, etc., who themselves through their employees or agents distribute them free-of-charge must pay a tax but only based on the purchase price of the items used in the publication, such as printers ink, paper and so forth, for the publishers or printers are, in those cases, the ultimate consumers of the items used in publishing the circulars, trade journals, etc., and the publication is not thereafter sold at retail. If the carrier receives as compensation the total amount charged by the publisher to the purchaser, the distribution shall be considered a free handout by the publisher or printer thereof.
- 6) Publications vended through vending machines, located within the city, are subject to the sales tax and the vendor must, regardless of the price of the publication, pay over to the Manager of Revenue an amount equivalent to 3.5% of gross sales made through vending machines.
- 7) All sales of publications by persons exempt from taxation, except the federal and state governments, and their agencies, are taxable to the same extent as sales by non-exempt persons.
- 8) Sales at retail of post cards or envelopes which have printed material added by a printer after having been acquired by or on behalf of the printer from the United States Postal Service are taxable, but the purchase price upon which the tax is based shall have deducted there from the postage.
- 9) Persons rendering services consume, many times, tangible personal property incidental to rendering services. The sales tax, and where applicable, the use tax, apply to the sale or use of such tangible personal property. If these persons rendering services, also sell tangible personal property to their customers, they become retailers with respect to such sales and must obtain the Retailer Sales License, collect taxes on such sales, file returns of taxes collected, and remit the taxes as measured by the purchase price of their sales.
- 10) In determining whether a transaction involves the sale of tangible personal property, or the performance of a service with a transfer of tangible personal property only occurring

incidental to the performance of the service, the Manager will examine the transaction from the purchaser's point of view. If the essence of the transaction is, from the purchaser's point of view, the acquisition of service, as such, the transaction or the use after sale, is not taxable even though some tangible personal property is incidentally transferred with the performance of the service. However, if a service is performed in the production of tangible personal property, and if the essence of the transaction, from the customer's point of view, is the acquisition of the tangible personal property, the transaction, or use after sale, is taxable. For example, the transfer of an original manuscript by the author thereof for a price to a publisher would not be subject to the tax in ordinary circumstances. The author is the real consumer of the paper constituting the manuscript, and the author would, therefore, pay a tax to his supplier based on the purchase price of the paper, ink, typewriter, etc. The publisher is interested in acquiring a service, i.e., the ideas of the author, not the paper itself. The publisher, then, would not pay a tax based on the price of the manuscript. A tax would, of course, apply to the sale of copies of the book published from the manuscript and transferred for a price by the publisher or another vendor. So, also, the tax would apply to a sale of the manuscript itself if the manuscript perhaps by reason of historic interest, was the item of tangible personal property of primary interest to the purchaser. Similar examples could be given regarding paintings, maps and subscription services for such information as petroleum well data, logs, etc., even if the medium publication were other than paper, as, for example magnetic tape.

- 11) When a transaction is regarded as a sale of tangible personal property, the tax applies to the purchase price transferred from the purchaser, or customer, to the retailer or seller without any deduction for the work, labor, skill, thought, or other element of expense incurred in producing the tangible personal property.

**BY ORDER OF THE MANAGER OF REVENUE**

TTR001



# **CITY & COUNTY OF DENVER, COLORADO**

## **DEPARTMENT OF FINANCE**

### **TREASURY TAX RULE 002**

#### **RULES IMPLEMENTING THE EXEMPTION FOR CERTAIN FOOD AND DRINK UNDER THE CITY RETAIL SALES AND CITY USE TAX ARTICLES OF THE DENVER REVISED MUNICIPAL CODE**

EFFECTIVE 10/1/2009

The following Rules are promulgated in accordance with the requirements of Section 53-23 and 53-94 of the *Denver Revised Municipal Code* and by virtue of the authority vested in the Manager of Finance by Articles II and III of Chapter 53 of said Code.

Section 53-26 of the Retail Sales Tax Article of the *Denver Revised Municipal Code* pertaining to exemptions provides for the sale of certain food for domestic, home, or household use and the sale of food as defined in certain provisions of federal law as of and after October 1, 1987, to be exempt from the City Retail Sales Tax notwithstanding the imposition of the tax generally on such items as prescribed in Section 53-25 of the article. Similarly, Section 53-97 of the City Use Tax Article provides exemptions for certain items of food and drink.

For the purpose of establishing standards and definitions which may be applied uniformly with regard to the application of the City Retail Sales and City Use Tax Articles, the Manager hereby adopts the following rules and regulations:

For purposes of this regulation food includes food and drink.

Any food, as specified in 7 U.S.C. §2012(g), as such section existed on October 1, 1987, or as thereafter amended, which is purchased with the medium of exchange commonly known as food stamps or supplemental nutrition assistance program ("SNAP") benefits, is exempt from the sales tax and use tax.

Any food, as specified in 42 U.S.C. §1786, as such section existed on October 1, 1987, or as thereafter amended, which is purchased with the medium of exchange commonly known as women, infant, and children ("WIC") vouchers, checks or similar certificates of exchange, is exempt from the sales tax and use tax.

Any food not purchased with federal food stamps, SNAP benefits, or WIC vouchers, checks or similar certificate of exchange is subject to taxation or exemption as provided in paragraphs 1, 2, and 3 below

1. a. (1) Food for domestic home consumption as defined by the federal supplemental nutrition assistance program in 7 U.S.C. sec. 2012(g), as such section existed on October 1, 1987, or as thereafter amended, is exempt from taxation as provided below, except for those items specified in 1.c. (This list of food and nonfood items under the federal supplemental nutrition assistance program is intended as a guide and not a complete listing.) The federal supplemental nutrition assistance program definition of food would include, among other items, meat, poultry, fish, bread, and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, dairy products, coffee, tea, cocoa, candy, breath mints, condiments, spices, soft drinks, cakes, cookies, potato chips, special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, healthfood items (e.g., Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, rose hips powder which is used for preparing tea, and other food products which are substituted for more commonly used food items in the diet), infant formulas, and items incorporated into foods with other ingredients (e.g., pectin, lard and vegetable oils);
- (2) Seeds and plants which produce food for human consumption are exempt from sales and use taxes only when they are purchased with food stamps;
- (3) Water marketed in containers and ice for human consumption are exempt from taxation, except for carbonated water as specified in 1.c. (1) of this regulation.
- b. Items which are considered nonfood items under the federal supplemental nutrition assistance program and thus are subject to sales tax include:
  - (1) Nonfood items even if sold in grocery or similar type stores (e.g., hardware, clothing, common household items such as cooking utensils, cleaning and paper products, soaps, toiletry articles, grooming items and cosmetics);
  - (2) Alcoholic beverages but excluding when marketed for domestic home consumption cooking wine, wine vinegar, and nonalcoholic cocktail mixes;
  - (3) Tobacco and tobacco products (except that cigarettes are exempt by ordinance from the sales and use taxes);
  - (4) Foods which are hot at the point of sale and which are kept above room temperature to make them palatable and suitable for immediate consumption, food marketed to be heated on the premises whether or not hot at the point of sale, and other food sold for consumption on the premises;
  - (5) Items not intended for human consumption (e.g., laundry starch, pet foods, other animal foods, and seeds marketed or packaged as birdseed);
  - (6) Items specifically labeled as being for use other than human consumption (e.g., decorative dye for hard cooked eggs);
  - (7) Food preservation equipment and items (e.g., pressure cookers, canning jars and lids, paraffin, freezer containers, and wrapping paper);
  - (8) Medicines (except that some prescription drugs and other medical items are exempt from sales and use tax by virtue of ordinance);
  - (9) Therapeutic products and deficiency correctors (e.g., vitamins and minerals which are marketed in various forms such as tablets, capsules, powders and liquids);

products such as cod liver oil which is used primarily as a source of vitamins A and D; and other such items which are primarily used for medicinal purposes or as health aids). (These products serve as supplements to food or food products rather than as food and, therefore, are not eligible. Because essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible.);

(10) Health aids (e.g., patent medicines and other products used primarily as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies, and antacids);

(11) Coffee and related food products sold to offices and commercial establishments as part of a "coffee" service.

c. Items which may qualify as food under the federal supplemental nutrition assistance program but do not qualify as food for purposes of the sales and use tax exemption (unless purchased with federal food stamps or WIC vouchers or checks) include:

(1) Carbonated water marketed in containers (e.g., sparkling or seltzer water; however, tonic water, pop and other sugar or sugar substitute carbonated beverages do qualify for the sales tax exemption);

(2) Chewing gum and breath mints;

(3) Seeds and plants to grow food (e.g., tomato or other fruit or vegetable plants or seeds);

(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);

(8) Food sold by or through vending machines; and

(9) Prepared food or food marketed for immediate consumption as specified in paragraphs 2 or 3 below.

d. It is not the obligation of a retailer to collect the sales tax on food marketed for domestic home consumption which after purchase is converted to or used for other purposes which are taxable. Such conversion or use is subject to any applicable sales or use tax (e.g., edible oil used to lubricate machines and food and coffee purchased for office or commercial uses).

2. While food marketed for domestic home consumption, with exceptions noted above, generally qualifies for the sales tax exemption, prepared food or food marketed for

immediate consumption does not qualify. The following guidelines apply in determining whether food is considered food for home consumption contrasted with prepared food or food for immediate consumption:

- a. Prepared food or food marketed for immediate consumption includes all food furnished or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer;
  - b. All hot foods and food marketed to be heated on the premises are considered to be prepared for immediate consumption and are therefore subject to tax regardless of the nature of the business making such sale and regardless of whether immediately consumed;
  - c. Prepared food or food marketed for immediate consumption also includes food served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carry out shops, and other like places of business at which prepared food is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities;
  - d. The following types of establishments typically do sell food marketed for domestic home consumption: grocery stores, convenience stores; bakeries, butcher shops, fruit and vegetable stores, and department stores;
  - e. The following types of establishments typically do not sell food marketed for domestic home consumption: newsstands; gift shops; stores, including convenience stores, located in public transportation centers, offices or other public or commercial buildings; entertainment facilities (e.g., theaters); and recreation facilities (e.g., sports arenas and stadiums). However, if such an establishment has been approved by the United States Department of Agriculture (“USDA”) to accept food stamps and/or SNAP benefits at the store location where the sale and purchase is to occur, the establishment is considered to sell food for domestic home consumption, and the vendor is not required to collect sales tax on any items eligible to be purchased with food stamps and/or SNAP benefits, subject to paragraph number one (1) above and its subparagraphs.
3. In determining whether food is considered for domestic home consumption or prepared food or food for immediate consumption, the following guidelines apply to the specialized establishments enumerated below:
- a. Bakery and Pastry Shop
    - (1) Sales by bakeries or pastry shops which do not have eating facilities are not subject to tax;
    - (2) Sales by bakeries or pastry shops which have eating facilities are taxable except for items sold on a take-out or to-go basis not to be consumed at the eating facilities provided by the retailer.
    - (3) Sales by bakeries or pastry shops that are delivered to the customer are taxable if the customer is a business entity; sales are not subject to tax if the customer is an individual purchasing for his or her own use.
  - b. Ice Cream Shops

- (1) Sales of ice cream cones, cups, sundaes, and the like, marketed for immediate consumption are subject to tax;
- (2) Items marketed in containers or packages for domestic home consumption, such as ice cream, ice cream bars, popsicles and fudgesicles, toppings sold in cans or jars, and cakes or pies, are not taxable.

c. Caterers

Normally all food sold by a caterer is subject to tax. However, if such caterer operates a retail store selling food items marketed for domestic home consumption, the rules governing taxability of food as set forth in paragraphs 1 and 2 apply. Sales by caterers of food from motor vehicles and other facilities are taxable.

d. Restaurants, Snack Bars, Carry-outs, etc.

All food sold by restaurants and similar establishments is subject to tax. However, when such restaurants also operate a pastry shop, ice cream shop, or grocery store, the rules applicable to such establishments apply to sales made from such facilities.

e. Liquor Stores

Food marketed for domestic home consumption by liquor stores is exempt. Alcoholic beverages, including spirituous, malt vinous liquors, are taxable. However, cocktail mixes which do not contain alcohol, cooking wines, and wine vinegars when any of which is marketed for domestic home consumption are exempt.

f. Street Vendors

Street Vendors (e.g., push carts, mobile food stands, and the like) will generally be subject to tax on all their sales. Sales of vegetables, fruit, and other groceries marketed for domestic home consumption by mobile markets or door-to-door vendors are exempt.

g. Vending Machines

All sales of food vended by or through machines are taxable.

**BY ORDER OF THE MANAGER OF FINANCE**

**CLAUDE PUMILIA**  
Manager of Finance

**DAVID R. FINE**  
City Attorney

By  
**CHARLES T. SOLOMON**  
Assistant City Attorney



# **CITY & COUNTY OF DENVER, COLORADO**

## **DEPARTMENT OF REVENUE**

### **TREASURY TAX RULE 003**

#### **RULES GOVERNING ACCESS TO RECORDS OPEN TO INSPECTION OR COPYING UNDER THE COLORADO REVISED STATUTES AND THE ORDINANCES OF THE CITY AND COUNTY OF DENVER**

EFFECTIVE 7/14/1990

Under the statutes of the State of Colorado and ordinances of the City and County of Denver, certain records kept by either the Assessor's Office, the Treasurer's Office or both the Assessor's Office and the Treasurer's Office in the Department of Revenue are open to inspection and copying. The following rules relate to such records and are promulgated hereby in accordance with the requirements of applicable law and by virtue of the authority vested in the Manager of Revenue under the Charter and ordinances of the City and County of Denver, State of Colorado.

#### **RECITALS**

- 1) The public policy of the State of Colorado is to open to inspection public records at reasonable times.
- 2) Generally, except where by Charter or ordinance otherwise stated, it is the public policy of the City and County of Denver to open to inspection public records at reasonable times.
- 3) The reality of a limited fisc and, therefore, limited space to house records, limited personnel to manage, compile, organize, obtain and process records, limited time to serve the desire of the public to see and copy records, and limited equipment to process, manipulate, prepare, preserve, create and retrieve records, mandates that some reasonable rules be observed for the public good in order that records may be protected from alteration, abuse, wear and tear, misuse, and defacement or permanent loss, and that other activities of the respective offices of the Treasurer and Assessor not be disrupted or interrupted, all to the end that the public may be better served with fairness to each member by the timely opportunity to inspect or copy records.
- 4) The criminal and, possibly, civil sanctions imposed on those individuals who violate the law by either disclosing records that may not be disclosed or not disclosing records that shall

be disclosed upon request suggest that duly adopted rules to govern ministerial actions would serve a public purpose.

- 5) Many times public records are in active use or in storage so that they are not immediately available for inspection or copying so that a means by which to inform the applicant of this fact and the availability of the record at a reasonable time within three working days following the request seems appropriate.
- 6) State statutes and other laws or regulations require for the production or copying of certain public records a payment of a fee or charge, and the need exists to protect and prevent the disclosure of such records without the proper fee being assessed or collected; further, the obtaining of data giving rise to material for which a fee is prescribed by statute without the payment of a fee should be discouraged and prevented, if possible, because it may not only undermine the recovery of the approximate expense of providing the record, but also lead to false, incomplete, or misleading records being published by the one obtaining the data.

#### RULES AND REGULATIONS ADOPTED

- 1) The definitions found in § 24-72-202, C.R.S., as amended from time to time, shall apply unless the context clearly requires a different meaning in accordance with customary usage.
- 2) Should a subordinate employee to the custodian be presented with a request for production or copying of a public record as to which the employee is uncertain as to whether the record may be disclosed, the employee shall defer the request, not to exceed twenty four hours, until the custodian or the custodian's surrogate may be consulted.
- 3) The public may not be allowed to use directly either its own or the data processing equipment of the Department of Revenue in inspecting or copying public records, but the necessary manual or electronic functions necessary to extract, collate, organize, retrieve, copy, or otherwise manipulate the records and data necessary to produce the record or allow for its inspection shall be performed by Department personnel using the equipment of the Department.
- 4) Members of the public waiting in person at the counter to inspect or copy records shall be served, sequentially for up to and including three requests at one time (episodic) before those inquiring by telephone or in writing; those inquiring by telephone shall be next served for up to and including three requests at one time (episodic); and those inquiring in writing shall be last served for requests upon their providing a self-addressed, stamped envelope with the proper postage and fee or charge required by law or regulation.
- 5) Data shall not be provided orally with the assurance that it is correct.
- 6) Each copy of an uncertified document, if it is not subject to a statutory fee shall be provided at a cost of \$1.25 each page. An additional charge of \$0.50 shall be collected for each page certified to be a true copy of the original by the custodian.
- 7) Public records open to inspection and copying include, by way of example, 1) tax sale books of record, 2) tax warrants, 3) statement of tax liens, 4) assessments for special districts and local public improvements, 5) statements of property taxes due, 6) issued certificates of purchase or redemption, and 7) valuations for assessment of real property.

- 8) The Department will provide information meeting all lawful requests within a reasonable period of time, not to exceed three working days.
- 9) Microfiche copy certified to be correct will be provided for \$5.00 each schedule upon written request unless a statutorily imposed fee requires a different payment in which event the statutory fee will control. Copies of official source documents shall be provided at the regular fee of \$1.75 each certified page and \$1.25 for uncertified pages unless a different fee or charge is required by law or regulation.
- 10) Requests made at one time for inspection for more than three schedules must be made in writing. A date and hour will be set within three working days during which the records will be available for inspection. Copies of the records shall be available upon payment of the regular fees unless a statute or regulation requires a different fee as, for example, § 30-1-102(l)(d), C.R.S.
- 11) Except where the Charter of the City and County of Denver requires the Manager of Revenue to act personally, employees in the Department of Revenue may act on the behalf of the Manager.
- 12) When employees of the Department of Revenue are called upon to research data for an applicant for information or public records, the fee prescribed by § 30-1-102(l)(s), C.R.S., shall be imposed.
- 13) These rules shall become effective immediately upon notice thereof being published in the newspaper selected for official advertising by the City and County of Denver.

**BY ORDER OF THE MANAGER OF REVENUE  
ALAN N. CHARNES**

**STEPHEN KAPLAN**  
City Attorney

TTR003



# **CITY & COUNTY OF DENVER, COLORADO**

## **DEPARTMENT OF REVENUE**

### **TREASURY TAX RULE 004**

#### **RULES RELATING TO THE FREQUENCY OF PERIODIC SALES AND USE TAX RETURNS**

**EFFECTIVE 10/15/1993**

*Denver Revised Municipal Code* Sections 53-28, 53-98, and 53-99 require, generally, that vendor and consumer returns of sales and use taxes be made monthly on or before the 20<sup>th</sup> day of each calendar month. These Code sections, along with Sections 53-23 and 53-94, empower the Manager of Revenue to modify by regulation or otherwise the frequency of making returns and to extend the reporting and payment period up to twelve months. §§53-28(b) and 53-99(b). In order to promote administrative efficiency and in order to alleviate the reporting burden of the taxpayer, the Department of Revenue has devised a uniform policy for taxpayers' reporting requirements. Therefore, pursuant to authority granted by law, the Manager of Revenue adopts and promulgates hereby the following regulation:

1. The returns required to be filed by taxpayers under the City Retail Sales Tax and City Use Tax Articles of the *Denver Revised Municipal Code* shall be due on or before the 20<sup>th</sup> day of each calendar month in each instance in which the average monthly tax liability for the previous six months exceeds \$300.00.
2. A taxpayer whose monthly tax liability over the preceding six months averages \$300.00 or less may report quarterly, a return for the months of January, February, and March being due on or before April 20, for the months April, May, and June, on or before July 20, and similarly, for succeeding months, returns are due on or before October 20, and January 20 for the preceding quarters of each calendar year.
3. A taxpayer whose monthly tax liability over the preceding six months averages \$15.00 or less may report annually, with a return being due on January 20 for the preceding calendar year.
4. Notwithstanding the above and foregoing periodic reporting requirements, the Manager may, as circumstances indicate justification to him or her, require in his or her judgement, certain vendors or consumers, or classifications or categories of vendors or consumers, to file their returns more frequently notwithstanding the dollar amount of their periodic tax liability averaged over the immediately preceding six months.

The Rules Relating to Frequency of Periodic Sales and Use Tax Returns published September 11, 1987 are hereby rescinded.

**BY ORDER OF THE MANAGER OF REVENUE  
PATRICIA SCHWARTZBERG**

**DANIEL MUSE**  
City Attorney

TTR004



# **CITY & COUNTY OF DENVER, COLORADO**

## **DEPARTMENT OF REVENUE**

### **TREASURY TAX RULE 005**

#### **RULES REGARDING THE ASSESSMENT AND COLLECTION OF SALES AND USE TAX ON SALES AND USE OF TANGIBLE PERSONAL PROPERTY ACQUIRED BY CONSTRUCTION COMPANIES**

EFFECTIVE 9/4/2001

The following rules and regulations are promulgated in accordance with the requirements of Sections 53-23 and 53-94 of the *Denver Revised Municipal Code* and by virtue of the authority vested in the Manager of Revenue by Articles II and III of Chapter 53 of said Code.

- 1) Any person that performs work in accordance with an agreement, oral or written, on real property for another falls within the terms "contractor" and "construction company" as those terms are used in this regulation. The terms are intended to include all building constructors, excavators, highway and road constructors, electrical, plumbing, and heating constructors, and others engaged in the construction, reconstruction, repair, or wrecking of any physical structure that is part of real estate.
- 2) Construction companies that purchase in the City tangible personal property that is to be incorporated into a building or structure by them pursuant to agreement shall be regarded for the purposes of applying the City Retail Sales Tax Article (Article II of Chapter 53 of the Denver Revised Municipal Code) as purchasers or consumers after a retail sale, and, therefore, personally liable for the payment of the sales tax to the vendor of said personal property (herein sometimes called "materials"). Further, unless the sales tax has been paid, construction companies must pay the use tax imposed by Article III of Chapter 53 of the Denver Revised Municipal Code on the storage, use, or consumption of all materials purchased for construction jobs if the storage, use, or consumption of the materials is to be within the City. The construction company must pay the sales or use tax directly to the vendor of the materials if the vendor is licensed and authorized to collect and return such tax to the City; however, if the vendor is not so licensed and authorized, then the construction company or contractor shall pay the tax directly to the Manager of Revenue and file a consumer's use tax return.

- 3) Because the contractor is deemed to be the consumer of the materials used in construction, the contractor may not avoid the payment of the sales or use tax by use of provisions in the construction agreement or by use of the name of a tax-exempt entity in an invoice or purchase order as the purchaser, whether or not the contractor is indicated thereon as the agent of such tax exempt entity. No exemption certificate issued by the State Department of Revenue or any other taxing authority will be recognized as a basis for exemption from the sales or use taxes levied by the City against construction companies.
- 4) Sales of stoves, refrigerators, washing machines, clothes dryers, storm windows, storm doors, patio covers, replacement garage doors, carpeting, fencing materials, prefabricated swimming pools, lawn sprinkling system materials, nursery stock, desert landscaping materials, sod, and other completed units of personal property to be affixed to, installed in, or used in conjunction with a structure and which can be removed without substantial damage to the structure and which can be removed without altering the functional use of the structure shall not be regarded as work performed by a contractor. As with all retail sales, the tax will be collected from the purchaser by the vendor. In the event a vendor of an appliance such as those named above should contract and charge for services necessary to the installation of the item, and the installation or service charges are indicated separately in the purchase order, invoice, or agreement pertaining to the installation of the item, the sales or use tax will be imposed only on the purchase price of the item; on the other hand, if installation charges are not separately stated from the purchase price of the appliance or similar item, the tax will be calculated based upon the total price of the purchase order, invoice, or agreement.
- 5) All purchases of tools or equipment within the City are subject to the Sales Tax Article, and all tools or equipment used or stored within the City are subject to the Use Tax Article. The prior use or storage in another jurisdiction of such property brought into the City shall not diminish the use tax liability to the City except that 1) it shall be reduced pro rata to the extent that a sales tax has been paid to the City or another municipality or county based on the purchase price of the property and 2) the use tax liability to the City shall be measured by the purchase price of the property except when the property is first used or stored in the City more than one year after its retail sale. The use tax will be measured by the market value of the tools and equipment, if less than the purchase price, when such property is first used or stored in the City more than one year after its retail sale; otherwise, if the market value is more than the purchase price, the use tax will be measured by the purchase price.
- 6) Any person who contracts to provide services including use of machinery or equipment at an hourly, daily, or other periodic rate is presumed to be a lessor of tangible personal property and must collect the sales or use tax on the fees charged for the use of such machinery and equipment. If the charge for the operator or operators of the equipment or machinery is not segregated from the rent for the hire of the machinery or equipment, the measure of the tax will be based on the total fee charged. Contractors who contract to provide their services including use of machinery or equipment on a lump-sum job basis are required to pay the sales or use tax only upon the purchase price or market value (see ¶5, above) of the machinery or equipment used in their contracting operations in Denver.

- 7) A vendor or retailer that also acts in the capacity of a construction company must remit the tax on materials removed for use in its construction jobs from its own stock of goods held for sale, and must base the tax on its cost of the materials so withdrawn.
- 8) Under customary circumstances, a City Retail Sales License will not be issued to a construction company because it is presumed to be the user or consumer of the tangible personal property acquired by it for use in fulfilling construction agreements.
- 9) The provisions of the Sales and Use Tax Articles pertaining to construction companies are equally applicable to subcontractors.
- 10) Construction companies that manufacture the materials or other items of tangible personal property that are to be incorporated into a structure in the fulfillment of an agreement of the construction company shall be liable under the Sales or Use Tax Articles to the same extent as other contractors are liable with the following exception: if a manufacturer-contractor manufactures or compounds the items to be incorporated or installed in a structure, the tax shall be measured by the gross value of all materials, labor, and services used in manufacturing the items. This paragraph is inapplicable to a manufacturer of tangible personal property for which no retail market exists.
- 11) Sales within the City of tangible personal property to be delivered and used outside the City by a construction company may be tax exempt if delivery of the property is made outside the City to the business address of the construction company or place of intended use by common carrier, by a truck owned and used by the vendor for delivery of such materials, or if the materials are mailed to the outside address.
- 12) A construction company, including a company that sells construction materials, acquiring or withdrawing from its own stock materials within the City strictly for use in its construction work in a municipal or county jurisdiction in which a use tax a) is collected by that jurisdiction in advance of the purchase of materials and b) is based upon an estimate made at the time a building permit is obtained from that jurisdiction for the work, shall receive credit for the use tax already paid against the sales or use tax liability imposed by the City, to the extent the foreign tax does not exceed the tax levied by the City. In order for any credit to be given, however, the property acquired or withdrawn from stock must actually be used in the municipal or county jurisdiction first collecting a use tax on the basis of the estimate made at the time the building permit is obtained.
- 13) The above rules supersede any conflicting rules previously issued by the Manager of Revenue regarding the assessment and collection of sales and use taxes on sales and use of tangible personal property by construction companies.

**BY ORDER OF THE MANAGER OF REVENUE  
CHERYL COHEN-VADER**

**J. WALLACE WORTHAM, JR.**  
City Attorney

By  
**ROBERT F. STRENSKI**  
Assistant City Attorney

TTR005



# **CITY & COUNTY OF DENVER, COLORADO**

## **DEPARTMENT OF REVENUE**

### **TREASURY TAX RULE 006**

#### **RULES REGARDING PREVIOUSLY PAID SALES OR USE TAXES**

**EFFECTIVE 12/17/2001**

Sales taxes are imposed on all retail transactions in the City and County of Denver ("Denver") subject to taxation under the City Retail Sales Tax Article. Use taxes are imposed on the privilege of use, distribution, storage or consumption (herein "use" or "uses") within Denver after a retail sale (occurring anywhere) under the City Use Tax Article. Denver allows a reduction in the amount of use taxes owed to it when a sales or use tax comparable to the Denver taxes has been lawfully imposed by and paid to another municipality for the same sale prior to the exercise of the privilege of taxable use in Denver. When a person pays a retail sales or use tax concerning the sale of a service or tangible personal property to another municipality in an amount less than the use tax imposed by Denver and then uses, stores, distributes or consumes the service or property in Denver, the tax to be paid Denver is measured by the difference between the tax amount imposed by Denver and the amount imposed by the other municipality. When the municipal sales tax lawfully imposed by and paid to another municipality is equal to or more than the use tax imposed by Denver, no use tax (or sales tax) is owed to Denver on the subsequent use in Denver. Taxes levied by a municipality, but collected by the state in which the municipality is situated, are considered as taxes paid to the municipality.

The amount of sales or use taxes owed to Denver will also be reduced by the amount of taxes that Denver is prohibited from collecting under the Constitution of the United States, federal law, or the Constitution of Colorado. When a reduction of taxes is required to comply with these constitutions or laws because sales or use taxes were previously paid in another state, the sales and use taxes paid to jurisdictions other than municipalities shall first reduce the sales and use tax payable to the State of Colorado and special districts encompassing Denver. To the extent the sales and use taxes paid in another state exceed the sales or use tax payable to the State of Colorado and any special districts, the excess shall reduce the amount of use tax owed to Denver regarding the same sale.

Reductions are allowed only for paid taxes that are legally due from a taxpayer. The amount of sales or use taxes owed to Denver is not reduced by sales and use taxes incurred for uses in other states after the purchased property departs from Denver.

An article of personal property may be the subject of multiple retail sales. Every retail sale is subject to taxation unless the sale is tax exempt. A tax is due in the full amount when a retail sale occurs in Denver, regardless of what occurred previously.

**BY ORDER OF THE MANAGER OF REVENUE  
CHERYL COHEN-VADER**

**J. WALLACE WORTHAM, JR.**  
City Attorney

By  
**ROBERT F. STRENSKI**  
Assistant City Attorney

TTR006



# CITY & COUNTY OF DENVER, COLORADO

## DEPARTMENT OF REVENUE

### TREASURY TAX RULE 007

## RULES GOVERNING HEARINGS BEFORE THE MANAGER OF REVENUE

EFFECTIVE 1/29/2002

The following rules shall govern all hearings before the Manager of Revenue and are promulgated in accordance with the requirements of the Denver Revised Municipal Code and by virtue of the authority vested in the Manager of Revenue.

1. As used in these Rules, unless the context clearly requires otherwise, the following terms shall have the following meanings:
  - A. “City” means the City and County of Denver, State of Colorado.
  - B. “Closely held corporation” means a private corporation incorporated under the laws of Colorado, with no more than three shareholders.
  - C. “Corporate Officer” means a duly elected president, vice president, secretary, or treasurer of a corporation.
  - D. “Hearing Officer” means the Manager or any person designated by the Manager to conduct hearings.
  - E. “Informal Hearing” means a hearing provided for in §29-2-106.1(8)(b)(I), C.R.S., **which applies only to sales and use tax hearings**, and which is specifically requested in writing by the taxpayer at the time a petition is filed. If not requested in the petition, the right to an Informal Hearing is waived, and a Formal Hearing shall be conducted.
  - F. “Manager” means the Manager of Revenue of the City and County of Denver.
  - G. “Shareholder” means an individual, an association of individuals, a partnership, or a corporation owning any share of corporation stock.

- H. "Taxes" shall mean monies due from a taxpayer under any of the following articles of the Denver Revised Municipal Code ("D.R.M.C." or "Code"): the sales tax article, the use tax article, the employee occupational privilege tax article, the business occupational privilege tax article, the lodger's tax article, the facilities development admissions tax article, except where the context is limited to sales and use taxes.
- I. "Taxpayer" means any person, individual, corporation, or other legal entity, subject to taxation under any of the tax articles listed in 1. H., above.

The definitions provided in the foregoing articles of the D.R.M.C. shall be applicable and determinative over any conflicting usage herein or as they or any of them pertain to the particular tax subject to review.

- 2. The Manager shall administer and enforce the tax articles and may promulgate rules and regulations pertaining thereto. The Manager shall be the officer charged with making the final determination and order upon which jurisdiction may be based in the District Court of the Second Judicial District for review pursuant to C.R.C.P. 106(a)(4), or, if the taxpayer properly elects an Informal Hearing, for a trial *de novo*, except that such decision-making responsibility of the Manager may be delegated as provided herein. All hearings shall be conducted by the Manager unless the Manager assigns a Hearing Officer to do so.
- 3. The petition must be filed within the time limit provided in the applicable ordinance. Neither the Manager nor any of the Manager's agents or employees is empowered to extend the time limitations for filing petitions which protest either an assessment or a denial of a claim for refund of taxes paid, or any other protest provided for in the D.R.M.C. Any assessment issued by or determination made by the Manager which is not timely protested becomes final and neither the Manager nor any other court or tribunal shall have jurisdiction to hear such protest.
- 4. The Taxpayer shall provide the following information in its petition:
  - A. The amount and type of tax involved and the time during which it accrued.
  - B. The date of the return or payment, or the date of the Notice of Final Determination, Assessment and Demand for Payment.
  - C. A plain, concise statement of all claims asserted by the Taxpayer as the basis of the petition.
  - D. A plain, concise statement, including relevant particulars, of all facts asserted by the Taxpayer in support of each claim.
  - E. A plain, concise statement of all points of law relied on by the Taxpayer in support of each claim, citing pertinent statutes, ordinances, regulations, cases and other authority.

- F. Any request for an informal hearing if the Taxpayer so chooses in a sales or use tax case.
- G. The name, address, and telephone number of the Taxpayer.
- H. The name, address, and telephone number of any attorney or legal representative representing the Taxpayer.
- I. The signature of the Taxpayer, Taxpayer's attorney, Taxpayer's corporate agent, or Taxpayer's legal representative, except if the petition is filed by e-mail, the signature shall be replaced by an attestation of the Taxpayer, Taxpayer's attorney, corporate agent, or legal representative that the information contained therein is true and correct based upon the information and belief of that individual.

Compliance with the above requirements is mandatory, and in the event of noncompliance, the Manager may impose any appropriate sanction, including, but not limited to, issuing orders for more definite statement or dismissing the petition.

- 5. If the last day for filing a petition falls on a Saturday, Sunday, or legal City holiday, the petition may be filed on the next business day.
- 6. Petitions filed by mail must meet the deadlines set forth in the particular ordinance.
- 7. A petition protesting an assessment or protesting the denial of a claim for refund of taxes paid may be filed with the Manager by facsimile. A petition filed by facsimile must be received in its entirety in the Manager's office by 11:59 p.m., Colorado time, on or before the last day to file the petition as provided for in the applicable ordinance. The burden is on the taxpayer to show that the facsimile was timely received by the Manager. The Manager is not responsible for any electronic, mechanical, or telephone malfunctions of any kind which may delay or prevent the transmittal of a fax, or the transmittal of a confirmation notice. Taxpayers are therefore encouraged to mail a copy of their petition, within the applicable time limit for mailing petitions, in addition to the fax. The facsimile protest shall be sent to the Manager, at a facsimile number provided by the Manager.
- 8. A petition protesting an assessment or protesting the denial of a claim for refund of taxes paid may be filed with the Manager by electronic mailing ("e-mail"). A petition which is e-mailed must be received in its entirety in the Manager's offices by 11:59 p.m., Colorado time, on or before the last day to file such petition. The burden is on the taxpayer to show that the e-mail protest was timely received by the Manager. The Manager is not responsible for any mechanical, electronic, or telephone malfunction of any kind which may delay or prevent the transmittal of an e-mail protest. Taxpayers are therefore encouraged to mail a copy of the petition within the applicable time limit

for mailing petitions, in addition to the e-mailed version. The e-mail petition shall be sent to an e-mail address provided by the Manager.

9. The Taxpayer shall file a legible petition. All petitions, briefs, and other papers or documents shall be either typewritten or legibly printed, and where any printed matter is faint or illegible, the Manager may refuse to accept the filing. If the Manager refuses to accept the filing, the Manager shall promptly notify the taxpayer of such refusal and the reasons therefore. Neither the Manager nor any of the Manager's agents or employees is empowered to extend the deadline for filing a petition which has been refused.
10. Upon receipt of a petition, the Manager shall assign a case number and a Hearing Officer to it and record the filing of the petition. The Hearing Officer shall assign the time and place for hearing the petition and shall so notify the Taxpayer, the City Attorney, and the Tax Compliance Section.
11. Upon being assigned the petition by the Manager, the Hearing Officer shall have the sole responsibility for making a final determination regarding petitions for modification or cancellation of assessments and denials of claims for refund that are made in compliance with the particular tax article involved. The Hearing Officer shall be charged with performing all functions necessary and incidental to making the final determination, including, but not limited to: issuing orders for more definite statement, issuing subpoenas, hearing evidence, examining documents, ruling on objections and motions, authorizing depositions, and issuing any other necessary orders pursuant to the powers given to the Manager. The Hearing Officer shall generally conduct the hearing as a quasi-judicial proceeding in conformance with the procedures and time limits set forth in the particular tax ordinance involved. All testimony shall be given under oath administered by the Hearing Officer.
12. The Hearing Officer may, in his or her discretion, require the City to file a response to the petition or the Hearing Officer may require the parties to furnish such additional information as the Hearing Officer determines to be necessary to frame the issues prior to the hearing, such as agreed and disputed facts, lists of exhibits, witnesses, and law relied upon. No *ex parte* communications with the Hearing Officer shall take place except in accordance with accepted practice in Colorado courts of general jurisdiction.
13. All requests for a continuance must be for good cause, in writing, and received by the Hearing Officer not less than seven (7) days prior to the date scheduled for the hearing. A copy of the request shall be served on the opposing party. The Hearing Officer will deny a request for continuance that may delay the issuance of a final decision beyond the time period for such decision provided by these Rules.

14. The order of proceedings in hearings shall be as follows:
  - A. Docket call by the Hearing Officer
  - B. Opening statement by Taxpayer (petitioner) and by the representatives of the City unless waived by either party or reserved by City until the opening of the City's case.
  - C. The City may be represented either by an employee of the Tax Compliance Section or by an attorney from the Department of Law.
  - D. Presentation of evidence by the Taxpayer, allowing cross-examination by the City (exhibits shall be lettered for identification by the Hearing Officer).
  - E. Presentation of evidence by the City, allowing cross-examination by the Taxpayer (exhibits shall be numbered for identification by the Hearing Officer).
  - F. The Hearing Officer may at any time address questions to any witness for the purpose of clarification.
  - G. Rebuttal and surrebuttal evidence, if any.
  - H. Closing argument by the Taxpayer followed by closing argument from the City with the opportunity to reply by the Taxpayer. The Taxpayer or the City may elect to submit written briefs in addition to or in lieu of closing argument. If the Taxpayer elects to submit a brief, then the City shall be permitted to file an answer brief. The schedule for filing such briefs shall be set by the Hearing Officer.
  
15. In all matters, the Taxpayer shall have the burden of proof to show by a preponderance of the evidence the correctness of the position of the Taxpayer.
  
16. Carbon copies, photographic copies, and copies made by duplicating machines, all properly authenticated, may be admitted into evidence or substituted in evidence in place of original documents.
  
17. A Taxpayer who is a natural person may appear in person to represent himself or herself. In the alternative, a natural person may be represented by an attorney admitted to practice in any of the United States. A corporate Taxpayer **must** be represented by an attorney admitted to practice in any of the United States **unless** it is a Colorado Closely Held Corporation. A Closely Held Corporation which is in compliance with the requirements otherwise imposed on corporations by law may be represented before the Manager of Revenue by a Corporate Officer if:

- A. The amount at issue in the controversy or matter before the Manager does not exceed ten thousand dollars, (\$10,000) exclusive of costs, interest, or statutory penalties; and
  - B. The Corporate Officer provides the Manager, at or prior to the trial or hearing, with a notarized copy of a written resolution signed by at least fifty percent (50%) of the corporation's Shareholders of record authorizing that Corporate Officer to appear on behalf of the corporation in all matters within the Manager's jurisdiction. The Manager may rely upon a written resolution of a Closely Held Corporation which allows a named officer to appear in the corporation's behalf.
18. Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted 7 days in advance of the hearing to the Hearing Officer.
19. The proceedings of the hearing shall be recorded by a certified shorthand reporter provided by the Manager, and by electronic means, but a transcript need not be made unless requested by a party. Transcripts of such record, made by the reporter, shall be made at the expense of the party requesting the transcript. The non-requesting party shall pay the copy fee if a copy is requested.
20. Whenever it appears that a petition is not filed within the time period mandated by the applicable ordinance, or that the Manager otherwise lacks jurisdiction, the case shall be dismissed by the Hearing Officer, unless, after having provided the Taxpayer a hearing to do so, the Taxpayer shows by a preponderance of the evidence that the petition was timely or that the Manager does have jurisdiction.
21. Any written motion involving a contested issue of law shall be accompanied by a statement of supporting legal authority. A responding party shall have seven days, or such lesser or greater time as the hearing officer may allow, in which to file a response.
22. The Hearing Officer may permit the appearance for argument only, written or oral, of amicus curiae, provided that the amicus argument shall be limited to issues presented by the Taxpayer.
23. Mailings, notices, computations of time, time limitations, service, and filings shall conform to the requirements of the particular tax article involved, and in any instance where these rules are inconsistent or alleged to be inconsistent with the provisions in the tax article, the provisions of the tax article shall govern as determined by the Hearing Officer, subject to judicial review.

24. This Rule 24 sets forth the special provisions for sales and use tax cases only. These provisions are to be applied to a taxpayer who wishes to have the proceedings in the case conducted as an Informal Hearing. Except as otherwise provided in this Rule 24, the other Rules Governing Hearings Before the Manager of Revenue are applicable to Informal Hearings.
- A. With respect to sales and use tax transactions, a Taxpayer may elect an Informal Hearing. The election for an Informal Hearing must be made in writing on the petition filed with the Manager. This election will govern the course of further proceedings with respect to any appeal from the Manager's decision. In the event the Taxpayer does not make a timely election for an Informal Hearing in the petition, then the proceedings shall be conducted as a Formal Hearing governed by the rules and ordinances applicable to Formal Hearings before the Manager, and an appeal from the Manager's decision shall be limited to judicial review as provided in C.R.C.P. 106(a)(4) in accordance with §29-2-106.1(9), C.R.S., and the D.R.M.C. Upon making an assessment, or giving notice of an initial denial of a claim for refund, the City will notify the Taxpayer that the Taxpayer may, within the time provided, elect an Informal Hearing.
  - B. No rules of evidence or filing of briefs shall be required in an Informal Hearing. Any evidence deemed by the Hearing Officer to have probative value shall be admissible. Briefs will not be required but the Hearing Officer may permit the filing of briefs by either the City or the Taxpayer.
  - C. A Taxpayer electing an Informal Hearing may elect to file a brief. The electing Taxpayer shall file the brief with the Hearing Officer and serve the attorney for the City with a copy not less than ten (10) days prior to the date scheduled for the hearing. The City may submit an answer brief any time after the Taxpayer files a brief but not later than thirty (30) days after the taxpayer submits its brief.
  - D. If a Taxpayer elects an Informal Hearing, then the hearing shall be held and the final decision issued by the Hearing Officer within ninety (90) days after the Manager receives the Taxpayer's written petition. This ninety (90) day period may be extended if a delay in holding the hearing or issuing a final decision is occasioned by the Taxpayer but, in any such event, such hearing shall be held and the final decision issued within one hundred and eighty (180) days from the date the Manager receives the Taxpayer's written petition.
25. The conduct of the Formal Hearing and the admission of evidence shall generally be in accordance with these rules without regard to whether they conform to common-law or statutory rules of procedure or evidence or other technical rules and provided that the rules of evidence, to the extent applicable, shall conform generally with those in

civil, non-jury cases in the District Court for the State of Colorado. The admissibility of evidence shall be encouraged, however, and the Hearing Officer shall be guided in receiving evidence by the provisions of the State Administrative Procedure Act.

26. A Formal Hearing shall be held within ninety (90) days from the date the Manager receives the Taxpayer's written petition, provided, however, that this time may be extended by written order of the Hearing Officer. A final decision shall be issued within ninety (90) days after the hearing unless any party wishes to file a brief in which case the final decision shall be issued within ninety (90) days after the last day set by the Hearing Officer for filing briefs.
  
27. In the event that any provision of these rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end, the various provisions of these rules are declared to be, and are, severable.
  
28. The above rules supersede any conflicting rules previously issued by the Manager of Revenue governing hearings.

**BY ORDER OF THE MANAGER OF REVENUE  
CHERYL COHEN-VADER**

**J. WALLACE WORTHAM, JR.**  
City Attorney

By  
**MARIA KAYSER**  
Assistant City Attorney

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