



# CITY & COUNTY OF DENVER, COLORADO

## DEPARTMENT OF FINANCE

### *TREASURY TAX RULE 005*

## **RULES REGARDING THE ASSESSMENT AND COLLECTION OF SALES AND USE TAX ON CONSTRUCTION CONTRACTORS**

EFFECTIVE: 4/1/2021

The following rules and regulations are promulgated in accordance with the requirements of Section 53-2 of the *Denver Revised Municipal Code* (“D.R.M.C.”) and by virtue of the authority vested in the Manager of Finance (“Manager”) by Articles I, II and III of Chapter 53 of the D.R.M.C.

1. Definitions.

As used in these Rules, the definitions in Chapter 53 of the D.R.M.C. shall apply, unless the context clearly requires a different meaning.

- a. “Construction Contractor” means any person or business entity who agrees to improve, alter, or repair real property of another. For purposes of this rule, construction contractors include, but are not limited to: building contractors; painting contractors; roofing contractors; electrical, plumbing, and heating/air conditioning contractors; excavating, grading, road, curb, and parking lot contractors; fencing contractors; and landscape contractors.
- b. “Construction Equipment” as used in these Rules has the same definition as found in Section 53-103(a)(8) of the D.R.M.C. Examples of Construction Equipment include, but are not limited to: off-road construction equipment, such as backhoes, loaders, and cranes; machines, such as generators and compressors; tools; and implements.

- c. "Construction Materials" as used in these Rules has the same definition as found in Sections 53-53(a)(8) and 53-103(a)(9) of the D.R.M.C.
  - d. "Construction Subcontractor" means a contractor who agrees to perform specified operations for another Construction Contractor.
  - e. "Construction Supplies" means tangible personal property that is used on a construction site which does not become part of the real property being worked on. Examples of Construction Supplies include, but are not limited to: cleaning compounds, lubricants, grinding wheels, hacksaw blades, sandpaper, tarpaulins, and rope.
  - f. "Manager" means the Manager of Finance of the City and County of Denver or the Manager of Finance's designee.
2. Construction Contractors who purchase Construction Equipment, Construction Materials, or Construction Supplies in the City shall be regarded for the purposes of applying the City Retail Sales Tax Article (Article II of Chapter 53 of the D.R.M.C.) as purchasers or consumers after a retail sale, and, therefore, are liable for the payment of the sales tax to the vendor. Construction Contractors must pay the sales or use tax directly to the vendor of the Construction Equipment, Construction Materials, or Construction Supplies 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 Contractor shall pay the use tax imposed by the City Use Tax Article (Article III of Chapter 53 of the D.R.M.C.) on the storage, use, distribution, or consumption of the Construction Equipment, Construction Materials, or Construction Supplies, if the storage, use, distribution, or consumption of said purchases is to be within the City, directly to the Manager and file a consumer's use tax return.
3. Because the Construction Contractor is deemed to be the consumer of the Construction Equipment, Construction Materials, or Construction Supplies, the Construction Contractor may not avoid the payment of the sales or use tax by use of provisions in a 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 Construction 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 Contractors.
4. All purchases of Construction Equipment, Construction Materials, or Construction Supplies within the City are subject to the Sales Tax Article, and all such tangible personal property used or stored within the City are subject to the Use Tax Article. The prior use or storage in another jurisdiction of Construction Equipment,

Construction Materials, or Construction Supplies brought into the City shall not diminish the use tax liability to the City except that: (a) 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 such tangible personal property and (b) the use tax liability to the City shall be measured by the purchase price of the Construction Equipment, Construction Materials, or Construction Supplies except when such tangible personal property is first used or stored in the City more than one year after its retail sale. When such tangible personal 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 such tangible personal property at the time of its first use within the City, if the market value is less than the purchase price; however, if the market value is more than the purchase price, the use tax will be measured by the purchase price.

5. Construction Contractors who lease Construction Equipment at an hourly, daily, or other periodic rate are liable for payment of the sales tax to the vendor 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 Contractor shall pay the tax directly to the Manager and file a consumer's use tax return. If the Construction Equipment comes with an operator, the sales or use tax will be imposed only on the price of the Construction Equipment; however, if the charge for the operator is not separately stated from the charge for the Construction Equipment, the tax shall be calculated based upon the total price of the purchase order, invoice, or agreement.
6. A person or business entity may act in the capacity as both a vendor or retailer and as a Construction Contractor. When acting in the capacity as a vendor or retailer, the person or business entity shall collect sales tax from its purchasers in accordance with the City Retail Sales Tax Article. When acting in the capacity as a Construction Contractor, the person or business entity shall: (a) pay sales tax or remit use tax on its purchases of Construction Equipment, Construction Materials, or Construction Supplies in accordance with paragraph 2 of these Rules or (b) if the person or business entity removes Construction Equipment, Construction Materials, or Construction Supplies from its own stock of goods held for sale, it shall pay the use tax directly to the Manager and file a consumer's use tax return in accordance with paragraph 2 of these Rules and the tax shall be based on its cost of such tangible personal property so withdrawn.
7. A Construction Contractor who also acts in the capacity of a vendor or retailer who removes Construction Equipment, Construction Materials, or Construction Supplies from its own stock of goods held for sale, within the City for use in its construction work outside the City in a municipal or county jurisdiction in which a

use tax: (a) is collected by that jurisdiction in advance of the purchase of the tangible personal property 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 tangible personal property acquired or withdrawn from stock must actually be used outside the City 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.

8. Construction Contractors who manufacture the Construction Materials or other items of tangible personal property that are to be incorporated into real property in the fulfillment of an agreement of the Construction Contractor shall be liable under the City Retail Sales Tax Article or the City Use Tax Article to the same extent as other Construction Contractors are liable with the following exception: if a manufacturer-contractor manufactures or compounds the items to be incorporated or installed in real property, the tax shall be measured by the gross value of all tangible personal property, labor, and services used in manufacturing the items.
9. Sales within the City of tangible personal property to be delivered and used outside the City by a Construction Contractor may be tax exempt if delivery of the tangible personal property is made outside the City to the business address of the Construction Contractor or place of intended use, by common carrier, by a truck owned and used by the vendor for delivery of such tangible personal property, or if the tangible personal property are mailed to the outside address.
10. Sales of completed units of tangible personal property, including, but not limited to stoves, ovens, refrigerators, dishwashers, washing machines, clothes dryers, televisions, carpeting, and window air conditioning units, along with an agreement to install such completed units of tangible personal property that are used in conjunction with real property, but do not become a permanent part of the real property, shall not be regarded as work performed by a Construction Contractor. As with all retail sales, the tax will be collected from the purchaser by the vendor. If the vendor of such completed units of tangible personal property should charge to install such units and the installation or service charges are indicated separately in the purchase order, invoice, or agreement pertaining to the installation of such units, the sales or use tax will be imposed only on the purchase price of such units; however, if the installation or service charges are not separately stated from the purchase price of such completed units of tangible personal property the tax shall be calculated based upon the total price of the purchase order, invoice, or agreement.

11. Under customary circumstances, a City Retail Sales License will not be issued to a Construction Contractor, because a Construction Contractor is presumed to be the user or consumer of the tangible personal property acquired by it for use in fulfilling construction agreements.
12. The provisions of the Sales and Use Tax Articles pertaining to Construction Contractors are equally applicable to Construction Subcontractors.
13. The above rules supersede any conflicting rules previously issued by the Manager regarding the assessment and collection of sales and use taxes on sales and use of tangible personal property by Construction Contractors.

**BY ORDER OF THE MANAGER OF FINANCE**

**BRENDAN HANLON**  
Manager of Finance

Approved by the City Attorney this 22nd day of March, 2021.

**KRISTIN M. BRONSON**  
City Attorney

By

**CHARLES T. SOLOMON**  
Assistant City Attorney