



Tax Compliance Guide Construction Industry

Department of Finance
Tax Division
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GENERAL INFORMATION

The Commerce City Revised Municipal Code ("CCRMC") generally considers construction contractors the users and/or consumers of construction materials. Contractors are responsible for paying use tax on not only construction materials installed on projects but also on equipment use, rentals, leases and purchases.

In the event that any prime or general contractor or subcontractor fails or refuses to pay any sales or use tax due, the general or prime contractor, and ultimately the owner or owners of the property benefited by the work, will be held liable for any tax due.

ESTIMATED PERMIT USE TAX

When a contractor or homeowner is issued a building permit, the applicant for the permit shall provide an estimated permit value at the time of application. Permit valuations shall include total value of all work including materials, equipment and labor (total cost of construction) for which the permit is being issued. This total cost of construction is the amount upon which the city calculates the estimated use tax deposit and the permit fees owed at the time the permit is issued.

To calculate the estimated use tax deposit Commerce City estimates that 60% of the total cost of construction for most construction projects is taxable. Therefore, the city multiplies the estimated project value by 60% to determine the total estimated taxable cost of construction. The city's current sales/use tax rate is then applied to this estimated taxable cost and this tax is charged, along with permit fees, as part of the total permit cost. Please note, that the tax paid is considered a deposit. The final tax liability associated with the project can only be known when the project is completed. Additional tax or a refund may be due.

IMPORTANT NOTICE!

Contractors/subcontractors must present a copy of a building permit when purchasing construction materials to avoid double paying city tax.

The use tax that is pre-paid on the permit is in lieu of paying local sales tax on construction materials and fixtures at the time of each individual purchase. Therefore, a copy of the building permit must be provided to vendors at the time of purchase in order for the purchase to be exempt from local tax. Failure to provide a copy of the permit may result in the necessity of filing a refund request with the city to which sales taxes were paid in error. Presenting the permit entitles your company to purchase materials for the permitted project without paying the local city sales tax. Materials may be purchased only for the project to which the permit applies. State and other non-municipal taxes may still apply.

Colorado Revised Statutes (CRS) **29-2-105(2)** prohibits vendors of construction materials to charge sales tax when a permit is presented.

"(2) No sales tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of construction and building materials, as the term is used in section 29-2-109, if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid."

NOTE: If a contractor is constructing infrastructure site work such as right of way (ROW) road, bridge, paving, curb and gutter, a separate site work permit is required. Site permits require their own valuations apart from the building permit, and use tax is also prepaid on these permits in the same manner as building permits (as explained above).

The City's [Building Division](#) of the Community Development Department issues building permits.

Phone: 303-289-3790

TAXABLE CONSTRUCTION PROJECTS

Commerce City tax is imposed on all construction materials and fixtures installed within the city regardless of where they are purchased. All construction within the City is taxable including that construction performed by a contractor on behalf of an exempt institution or a governmental, religious,

charitable, private or any other type owner.

If a contractor purchases construction materials or fixtures in a city other than Commerce City and pays that city's sales tax, Commerce City will not issue a refund. Contractors must apply for a refund directly to the city paid in error. Sales taxes paid in error to another municipality cannot be credited against use tax due on materials.

CONSTRUCTION MATERIALS

CCRMC [Section 20-3-20 \(Pg. 26\)](#) defines construction materials as, "...tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project..." "Materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project are not construction materials." These non-construction materials, as well as tools, equipment, supplies, portable toilets, trailers etc. whether purchased, rented or leased are subject to Commerce City tax when used or stored within the city unless another city tax equal to or greater than the Commerce City tax rate is legally imposed at the time these items were picked up outside of Commerce City.

Construction materials do not include items such as carpet, furniture, appliances, business machinery and equipment, removable fixtures, signs, solar energy systems, window coverings, HVAC and other equipment, tools, supplies, or other similar items.

TAXATION EXAMPLES

Example #1 – ABC Construction applies for and obtains two permits from the City of Commerce City, one to construct a new office building and one to do site work. ABC contracts with several subcontractors to do the electrical, plumbing, HVAC, and site work. ABC pays estimated use tax to the city on both permits.

XYZ Plumbing, a subcontractor working for ABC on this project goes to a supplier located in Denver to buy water and waste/vent pipe. At the time of purchase, XYZ presents to the supplier a copy of the building permit obtained from ABC. Because ABC is required to pay Commerce City tax, XYZ should not be charged for or pay any city tax to the supplier. The supplier is only allowed to charge XYZ Colorado state sales taxes (State and RTD/CD) of 4.0% on the construction materials.

Example #2 - Great Asphalt Company, also a subcontractor working for ABC, goes to a rock quarry in Brighton to purchase and pick up several tons of paving material to be used at the project in Commerce City. Because City tax was required to be paid on the site permit, Great Asphalt should pay only 4.75% sales tax (State, RTD/CD and Adams County) on the purchase of these construction materials. Great Asphalt must present a copy of the ABC permit to the rock quarry to avoid being charged Brighton city tax.

Example #3 – ABC Construction picks up lumber at a yard in Aurora to be used on the Commerce City office building project and does not present the city permit when paying for the purchase. The lumber yard charges 8.0% sales tax, which includes Aurora tax of 3.75%. ABC should have presented the permit to avoid double paying city tax and will have to obtain a refund through either the lumber vendor or directly from the City of Aurora. Commerce City tax is still due.

FIXTURES

Fixtures are tangible property which are accessory to a building and which do not lose their identity as accessories when placed or installed.

Per CCRMC [Regulation 20-S.I.15\(C\)- \(Pg. 144\)](#) "**Fixtures Furnished and Installed by Contractors** - Contractors are retailers of "fixtures" which they furnish and install and tax applies to the retail selling price thereof; which, in the case of lump-sum construction contracts, is regarded as the cost price of the fixtures to the contractors."

Example #1– ABC Construction pick up a roof top air conditioning unit from a supplier in Arvada for a building project constructed in Commerce City. Because the A/C unit is a fixture, ABC should present the building permit and/or the City's Affidavit of Exempt Sale to exempt the sale from city tax. The supplier should charge state taxes only. Since the A/C unit is included in the construction contract lump sum price of the building, ABC or the owner of the building owes Commerce City use tax on the retail price paid for the unit.

FURNITURE, BUSINESS MACHINERY AND EQUIPMENT

As distinguished from construction materials and fixtures, furniture, appliances, manufacturing equipment and business machinery are tangible

personal property that is not incorporated into or accessory to a building structure. These items, when purchased by either a contractor or the owner are taxable to the purchaser unless a construction contractor is acting in the capacity of a retailer-contractor purchasing these items on behalf of a building owner. Construction contractors may install such items as part of a construction contract, but these items cannot be purchased city tax-free by presenting a construction permit.

RETAILER-CONTRACTOR. If a construction contractor also acts in the capacity of a "Retailer-Contractor," as defined in 20-3-68 of the CCRMC, the contractor must obtain a sales and use tax business license with the city and collect sales tax on the sale of any tangible personal property within the city. Such retailer-contractors can and should purchase tangible property at wholesale (tax free) if they are selling it to their customers in the city at retail. To purchase tax free, all retailers of tangible property must present their city and state tax licenses along with a completed "[Affidavit of Exempt Sale](#)" form at the time of original purchase from the supplier/vendor.

Example #1 –ABC Construction orders a stove and refrigerator from a large national appliance vendor to be delivered to the job site in Commerce City. The appliance vendor is not licensed in Commerce City, so charges ABC Construction only Colorado state sales taxes (State and RTD/CD). Because the appliances are not construction materials, the project permit cannot be presented to exempt the purchase from city sales tax. Since city tax was not charged by the vendor at time of purchase, ABC Construction or the building owner owes 4.50% use tax to the City on the purchase.

SUPPLIES AND TOOLS

Contractors are the consumers of supplies and tools that they use in their business, which includes but is not limited to items such as oxygen, acetylene, gasoline, propane, water mitigation supplies, temporary fencing, temporary signage, blueprints, computers, printers, hard hats, office supplies, gloves, tools, utilities (including water), cell phones and communication equipment, ladders, fans, extension cords, portable trailer and toilet rentals, and small equipment purchases and rentals. Sales/use tax applies to the sale and rental of such supplies and tools.

Example #1 – L&M Constructors goes to Lowes in Lakewood and purchases buckets, rope, a

handsaw, a small electric drill, drill bits, sandpaper, duct tape and a lamp and office chair for their construction trailer. The cost of these items is \$500.00 plus 7.50% (\$37.50) sales tax, which correctly includes 3.0% Lakewood city tax. L&M brings these items to a Commerce City jobsite for use on a construction project. Because L&M is engaged in business as a contractor within Commerce City, L&M is required to report and pay Commerce City use tax on the price paid for the supplies and tools. Because Lakewood's tax is legally imposed, the use tax owed is based on the difference in tax rates between the 3.0% Lakewood tax paid and the Commerce City tax rate of 4.5%, or a difference of 1.50%.

Use tax owed is $(\$500 \times 1.50\%) = \7.50 .

Example #2 – L&M Constructors has a fuel supplier deliver gasoline and propane to the Commerce City job site for use in their off-road construction equipment and generator. The supplier bills L&M \$1,000 and does not charge any sales tax. L&M also picks up a truckload of hay bales costing \$400.00 for water mitigation use at the jobsite. The hay vendor is located in unincorporated Adams County and charges 4.75% state and county tax. L&M owes \$63.00 Commerce City use tax ($4.5\% \times \$1,400$) on the fuel and hay purchases.

Example #3 – L&M Constructors picks up temporary mesh fencing and some signage in Denver for use at the Commerce City job site. The vendor charges a combined Colorado and Denver sales tax rate of 8.81% that includes city tax of 4.81%. Since a city tax rate greater than Commerce City's 4.5% rate has been charged, no additional taxes are owed.

FABRICATION LABOR

Though construction labor that involves the installation of construction materials in the process of building realty is not taxable, fabrication labor is taxable under the CCRMC.

Example #1 – ABC Construction contracts Fine Metal Fabricators to build and install metal staircases and railings in the office building ABC is constructing in Commerce City. Fine fabricates the staircases and railings in its shop and then installs them in Commerce City. Fine bills ABC Construction \$35,000, including \$14,000 materials, \$15,000 fabrication labor, and \$6,000 installation labor. ABC's taxable cost is \$29,000 for the materials and the fabrication labor.

CONSTRUCTION EQUIPMENT

All construction equipment, as defined in [Section 20-3-19 \(Pg. 26\)](#) of the CCRMC, with a purchase price of \$2,500 or more that is used or stored within the city is subject to the city's use tax. Contractors that own construction equipment are required to declare and pay tax to the city on such equipment using the city's [Construction Equipment Declaration form](#) on or before the day the equipment is brought into the city.

The price paid for construction equipment that is physically located in the City 31 or more consecutive days is taxable. If the equipment is located in the city for 30 consecutive days or less, 1/12 of the original purchase price of the equipment is taxable, **but only if declared before it is brought into the city**. Each time a piece of equipment is moved in and out of the city it is considered a separate taxable event. Credit is given for sales/use taxes previously legally imposed and paid. Thus, if city sales tax equal to or greater than Commerce City's tax rate was legally imposed and paid on the original purchase of the equipment, or if the sum of city taxes previously paid on equipment declarations of other cities was greater than Commerce City's tax rate prior to the time the equipment is brought into Commerce City, no additional tax is due.

Note: If a state tax other than Colorado is paid on construction equipment at point of purchase, credit for this tax is allowed. If the tax rate paid is less than the Commerce City combined city and state collected tax rate, tax is owed on the difference between the tax rates.

Example #1 – XYZ Excavating Co. used a bulldozer and an excavator on a project in Commerce City for 18 consecutive days. XYZ originally purchased the bulldozer in Wyoming for \$50,000.00 and paid 6.0% WY sales tax at the time of purchase. XYZ bought the used excavator at an auction, paid \$100,000.00, and did not pay any sales tax at the time of purchase. XYZ filed the city's Construction Equipment Declaration the day before bringing the equipment into the city.

Because XYZ picked up the bulldozer in Wyoming and paid 6.0% tax on it, credit for this tax is allowed. The combined Commerce City/Colorado tax rate (excluding Adams County) is 8.50%. The difference between this combined rate of 8.50% and the 6.0% WY tax paid, or 2.50%, is due to the city. Tax is owed on 1/12th of the purchase price as follows:

$(\$50,000 \times 1/12^{\text{th}} = \$4,166.67)$ Taxable
 $(\$4,166.67 \times 2.50\% = \$104.17)$ Tax Due

XYZ owes use tax on 1/12th of the purchase price of the excavator as follow:

$(\$100,000 \times 1/12^{\text{th}} = \$8,333.33)$ Taxable
 $(\$8,333.33 \times 4.50\% = \$375.00)$ Tax Due

Combined Tax Due: \$ 479.17 (\$375.00 + \$104.17)

WHEN EQUIPMENT IS NOT TIMELY DECLARED – TAX IS OWED ON FULL PURCHASE PRICE

If XYZ did not timely file and declare the equipment prior to the date it was brought into the city, tax is owed on the full purchase price of both pieces of equipment as follows:

Bulldozer - $(\$50,000 \times 2.50\% = \$1,250.00)$

Excavator - $(\$100,000 \times 4.50\% = \$4,500.00)$

Example #2 – Using same information from Example #1: XYZ Excavation Co. timely declared the equipment, completed the job and then moved it to another location outside the city. Twenty days after moving the equipment out of Commerce City, XYZ brings the same bulldozer and excavator into the city to use on a separate job and uses it for 32 consecutive day. Because tax was only paid on 1/12th of the price of the equipment on the prior job, and because XYZ used the equipment in the city for 31 or more consecutive days, tax is owed on the full purchase price of the equipment as follows:

Bulldozer - $(\$50,000 \times 2.50\% = \$1,250.00)$ less credit for tax previously paid (\$104.17) equals net tax due (\$1,145.83).

Excavator - $(\$100,000 \times 4.50\% = \$4,500.00)$ less credit for tax previously paid (\$375.00) equals net tax due (\$4,125.00).

FREE SEMINARS/INFORMATION

The City offers free Sales & Use Tax seminars periodically throughout the year. For specific questions regarding municipal taxation pertaining to the Construction Industry or to inquire about the next seminar, please contact the City's Tax Division at salestax@c3gov.com or 303-289-3628. You may also visit the [Tax Division's website](#).

Important Note: This information is provided as a general overview of the City of Commerce City's Sales and Use Tax Code, and is not intended to replace or supersede the information contained in the Commerce City Revised Municipal Code.