



**CITY OF LAKEWOOD, COLORADO**

**SALES AND USE TAX  
RULES AND REGULATIONS AND SPECIAL REGULATIONS**

**TABLE OF CONTENTS**

	<u>PAGE</u>
Regulation 3.01.010 - Reserved .....	10
Regulation 3.01.020(1) - Reserved .....	10
Regulation 3.01.020(2) - Reserved .....	10
Regulation 3.01.020(3) - Auction or Auction Sale .....	10
Regulation 3.01.020(3.5) - Reserved .....	11
Regulation 3.01.020(4) - Reserved .....	11
Regulation 3.01.020(5) - Reserved .....	11
Regulation 3.01.020(5.5) - Reserved .....	11
Regulation 3.01.020(6) - Reserved .....	11
Regulation 3.01.020(7) - Reserved .....	11
Regulation 3.01.020(8) - Reserved .....	11
Regulation 3.01.020(9) - Reserved .....	11
Regulation 3.01.020(10) - Reserved .....	11
Regulation 3.01.020(11) - Reserved .....	11
Regulation 3.01.020(11.5) - Reserved .....	11
Regulation 3.01.020(12) - Reserved .....	11
Regulation 3.01.020(12.5) - Reserved .....	11
Regulation 3.01.020(13) - Reserved .....	11
Regulation 3.01.020(14) - Reserved .....	11
Regulation 3.01.020(15) - Reserved .....	11
Regulation 3.01.020(16) - Reserved .....	11
Regulation 3.01.020(17) - Doing business in the City .....	11
Regulation 3.01.020(18) - Farmer or Rancher .....	11
Regulation 3.01.020(19) - Reserved .....	12
Regulation 3.01.020(20) - Reserved .....	12
Regulation 3.01.020(21) - Baker, Caterers, Drug Stores, Restaurant, Grocery, Liquor & Vending ...	12
Regulation 3.01.020(22) - Reserved .....	13
Regulation 3.01.020(22.5) - Gross taxable sales.....	13
Regulation 3.01.020(22.6) - Reserved .....	14

Regulation 3.01.020(22.7) -	Reserved .....	14
Regulation 3.01.020(23) -	Reserved .....	14
Regulation 3.01.020(24) -	Reserved .....	14
Regulation 3.01.020(24.3) -	Reserved .....	14
Regulation 3.01.020(24.5) -	Reserved .....	14
Regulation 3.01.020(25) -	Reserved .....	14
Regulation 3.01.020(26) -	Reserved .....	14
Regulation 3.01.020(26.1) -	Reserved .....	14
Regulation 3.01.020(26.2) -	Reserved .....	14
Regulation 3.01.020(26.3) -	Reserved .....	14
Regulation 3.01.020(27) -	Purchase price.....	14
Regulation 3.01.020(27.1) -	Reserved .....	16
Regulation 3.01.020(28) -	Reserved .....	16
Regulation 3.01.020(29) -	Retail sale, Purchase at retail or Selling at retail .....	16
Regulation 3.01.020(29.1) -	Reserved .....	16
Regulation 3.01.020(29.2) -	Room, Accommodation.....	16
Regulation 3.01.020(30) -	Sale or Sale and purchase .....	17
Regulation 3.01.020(30.1) -	Reserved .....	17
Regulation 3.01.020(31) -	Reserved .....	17
Regulation 3.01.020(31.1) -	Reserved .....	17
Regulation 3.01.020(31.2) -	Reserved .....	17
Regulation 3.01.020(32) -	Reserved .....	17
Regulation 3.01.020(33) -	Reserved .....	17
Regulation 3.01.020(34) -	Tangible personal property .....	17
Regulation 3.01.020(35) -	Specific statutory exemptions.....	18
Regulation 3.01.020(35.1) -	Reserved .....	18
Regulation 3.01.020(35.2) -	Reserved .....	18
Regulation 3.01.020(35.3) -	Reserved .....	18
Regulation 3.01.020(36) -	Taxpayer .....	18
Regulation 3.01.020(37) -	Reserved .....	18
Regulation 3.01.020(37.1) -	Reserved .....	18
Regulation 3.01.020(38) -	Reserved .....	18
Regulation 3.01.020(39) -	Wholesale sale .....	18
Regulation 3.01.030(1) -	Reserved .....	19
Regulation 3.01.030(2) -	Reserved .....	19
Regulation 3.01.030(3) -	Reserved .....	19
Regulation 3.01.030(4) -	Reserved .....	19

Regulation 3.01.030(5) -	Reserved .....	19
Regulation 3.01.040 -	Duty to collect tax .....	19
Regulation 3.01.050 -	Reserved .....	20
Regulation 3.01.060 -	Reserved .....	20
Regulation 3.01.065 -	Record Keeping .....	20
Regulation 3.01.070 -	Reserved .....	25
Regulation 3.01.075 -	Reserved .....	25
Regulation 3.01.076 -	Reserved .....	25
Regulation 3.01.080 -	Reserved .....	25
Regulation 3.01.090 -	Reserved .....	25
Regulation 3.01.100 -	Reserved .....	25
Regulation 3.01.110(1)(a) -	Reserved .....	25
Regulation 3.01.110(1)(b) -	Reserved .....	25
Regulation 3.01.110(2) -	Reserved .....	25
Regulation 3.01.110(3) -	Reserved .....	25
Regulation 3.01.110(4) -	Reserved .....	25
Regulation 3.01.110(5) -	Reserved .....	25
Regulation 3.01.110(6) -	Reserved .....	25
Regulation 3.01.120(1) -	Imposed tax upon the purchaser .....	25
Regulation 3.01.120(2) -	Trade in of tangible personal property .....	26
Regulation 3.01.120(c) -	Telecommunication: Intrastate, Mobile & Data .....	26
Regulation 3.01.120(3)(b) -	Reserved .....	29
Regulation 3.01.120(4)(a) -	Gas, Electric & Steam services furnished .....	29
Regulation 3.01.120(4)(b) -	Gas & Electric used by residences .....	30
Regulation 3.01.120(5)(a) -	Food .....	30
Regulation 3.01.120(5)(b) -	Nontaxable Gratuities .....	30
Regulation 3.01.120(6) -	Accommodation or Lodging payments or deposit .....	31
Regulation 3.01.120(7) -	Reserved .....	31
Regulation 3.01.120(8) -	Registration, licensing or title of auto by gift .....	31
Regulation 3.01.120(9) -	Reserved .....	31
Regulation 3.01.120(10) -	Security system services .....	31
Regulation 3.01.120(11) -	Reserved .....	32
Regulation 3.01.120(12) -	Warranty & Maintenance contracts .....	32
Regulation 3.01.120(13) -	Modified or Customized software .....	32
Regulation 3.01.120(14) -	Reserved .....	34
Regulation 3.01.130(1)(a) -	Vendor of tangible personal property .....	34
Regulation 3.01.130(1)(b) -	Filing Frequencies .....	34

Regulation 3.01.130(1)(c) -	Filing Extensions.....	35
Regulation 3.01.130(1)(d) -	Exempt sales documentation.....	35
Regulation 3.01.130(1)(e) -	Duty of the vendor to collect tax .....	36
Regulation 3.01.130(1)(f) -	Reserved .....	36
Regulation 3.01.130(2) -	Reserved .....	36
Regulation 3.01.140(1) -	Sales / Use tax of manufacturing, producing & Fab.....	36
Regulation 3.01.140(2) -	Imposed sales tax schedule & rounding .....	37
Regulation 3.01.140(3)(a) -	Sales tax on multiple items under the taxable requirement	38
Regulation 3.01.140(3)(b) -	Taxation of malt, vinous or spirituous liquors .....	38
Regulation 3.01.150 -	Multiple location / Consolidated Filing.....	39
Regulation 3.01.160(1) -	Credit card sales.....	39
Regulation 3.01.160(2) -	Reserved .....	40
Regulation 3.01.170 -	Reserved.....	40
Regulation 3.01.180(1) -	Sales to the United States Government, State or Local .....	40
Regulation 3.01.180(2) -	Sales to charitable organization / exemptions.....	41
Regulation 3.01.180(3) -	Constitutional, Delivery & Railroad sales exemptions.....	42
Regulation 3.01.180(4) -	Cigarette / Tobacco.....	42
Regulation 3.01.180(5) -	Prescription.....	43
Regulation 3.01.180(5.1) -	Reserved .....	43
Regulation 3.01.180(6) -	Permanently occupied room / accommodation.....	43
Regulation 3.01.180(7) -	Sales to Schools - Exemptions.....	43
Regulation 3.01.180(8) -	Reserved .....	43
Regulation 3.01.180(9) -	Reserved .....	43
Regulation 3.01.180(10) -	Reserved .....	43
Regulation 3.01.180(11) -	Reserved .....	43
Regulation 3.01.180(12) -	Reserved .....	43
Regulation 3.01.180(13) -	Reserved .....	44
Regulation 3.01.180(14) -	Reserved .....	44
Regulation 3.01.180(15) -	Reserved .....	44
Regulation 3.01.180(16) -	Reserved .....	44
Regulation 3.01.180(17) -	Reserved .....	44
Regulation 3.01.180(18) -	Contractors and subcontractors.....	44
Regulation 3.01.180(19) -	Reserved .....	44
Regulation 3.01.180(20) -	Container, label or shipping case, Personal property to manufacturer a product	44
Regulation 3.01.180(21) -	Electricity, coal, gas, fuel, coke or nuclear fuel used for mining .....	47
Regulation 3.01.180(22) -	Reserved .....	47
Regulation 3.01.180(23) -	Livestock & Poultry.....	47

Regulation 3.01.180(24)(a) -	Vending sales tax of greater or less than (\$.30) .....	47
Regulation 3.01.180(24)(b) -	Reserved.....	48
Regulation 3.01.180(25) -	Livestock & Poultry.....	48
Regulation 3.01.180(26) -	Factory built home, Modular or Sectional .....	48
Regulation 3.01.180(27) -	Reserved .....	48
Regulation 3.01.180(28) -	Reserved .....	48
Regulation 3.01.180(29) -	Reserved .....	48
Regulation 3.01.180(30) -	Sale of equipment to publishers & newspapers .....	48
Regulation 3.01.180(31) -	Reserved .....	49
Regulation 3.01.180(32) -	Reserved .....	49
Regulation 3.01.180(33) -	Reserved .....	49
Regulation 3.01.190 -	Reserved.....	49
Regulation 3.01.200 -	Reserved.....	49
Regulation 3.01.210 -	Use Tax .....	49
Regulation 3.01.220(1)(a) and (b) -	Use Tax reporting .....	50
Regulation 3.01.220(2) -	Use Tax for retailers not maintaining a location in the City. 50	
Regulation 3.01.220(3)(a) -	Reserved.....	51
Regulation 3.01.220(3)(b) -	Reserved.....	51
Regulation 3.01.220(4)(a) -	Reserved .....	51
Regulation 3.01.220(4)(b) -	Improvements to realty – parking lots, sidewalks, lighting . 51	
Regulation 3.01.220(4)(c) -	Reserved.....	51
Regulation 3.01.220(5) -	Reserved .....	51
Regulation 3.01.230(1) -	Imposition of a use tax.....	51
Regulation 3.01.230(2) -	Use tax as a complement to sales tax.....	51
Regulation 3.01.230(3) -	Reserved .....	52
Regulation 3.01.230(4) -	Nonresidents acquiring residency in the City .....	52
Regulation 3.01.230(5) -	Reserved .....	52
Regulation 3.01.230(6) -	Reserved .....	52
Regulation 3.01.230(7) -	Reserved .....	52
Regulation 3.01.230(8) -	Reserved .....	53
Regulation 3.01.230(9) -	Reserved .....	53
Regulation 3.01.230(10) -	Reserved .....	53
Regulation 3.01.230(11) -	Property brought into the City by a nonresident.....	53
Regulation 3.01.230(12) -	Reserved .....	53
Regulation 3.01.230(13) -	Reserved .....	53
Regulation 3.01.230(14) -	Reserved .....	53
Regulation 3.01.230(15) -	Reserved .....	53

Regulation 3.01.230(16) -	Reserved .....	53
Regulation 3.01.230(17) -	Reserved .....	53
Regulation 3.01.230(18) -	Reserved .....	53
Regulation 3.01.230(19) -	Reserved .....	53
Regulation 3.01.230(20) -	Reserved .....	53
Regulation 3.01.230(21) -	Reserved .....	53
Regulation 3.01.230(22) -	Reserved .....	53
Regulation 3.01.230(23) -	Reserved .....	53
Regulation 3.01.230(24) -	Reserved .....	53
Regulation 3.01.230(25) -	Reserved .....	53
Regulation 3.01.240(1) -	Reserved .....	53
Regulation 3.01.240(2) -	Reserved .....	53
Regulation 3.01.240(3) -	Reserved .....	54
Regulation 3.01.240(4) -	Reserved .....	54
Regulation 3.01.240(5) -	Reserved .....	54
Regulation 3.01.240(6) -	Reserved .....	54
Regulation 3.01.250(1) -	Reserved .....	54
Regulation 3.01.250(2) -	Reserved .....	54
Regulation 3.01.250(3) -	Refunds Requests .....	54
Regulation 3.01.250(4) -	Reserved .....	55
Regulation 3.01.250(5) -	Tax credit(s) on future returns .....	55
Regulation 3.01.250(6) -	Reserved .....	55
Regulation 3.01.260(1) -	Trusteeship of funds .....	55
Regulation 3.01.260(2)(a) -	Reserved.....	55
Regulation 3.01.260(2)(b) -	Reserved.....	55
Regulation 3.01.260(2)(c) -	Reserved.....	55
Regulation 3.01.260(3)(a) -	Reserved.....	55
Regulation 3.01.260(3)(b) -	Reserved.....	55
Regulation 3.01.260(4) -	Reserved .....	55
Regulation 3.01.260(5) -	Reserved .....	55
Regulation 3.01.260(6)(a) -	Reserved.....	55
Regulation 3.01.260(6)(b) -	Reserved.....	55
Regulation 3.01.260(7) -	Reserved .....	55
Regulation 3.01.260(8) -	Reserved .....	55
Regulation 3.01.260(9) -	Reserved .....	56
Regulation 3.01.260(10) -	Claims for Recovery (tax remitted to incorrect Cities.....	56
Regulation 3.01.260(11) -	Reserved .....	57

Regulation 3.01.270(1)(a) -	Reserved.....	57
Regulation 3.01.270(1)(b) -	Reserved.....	57
Regulation 3.01.270(1)(c) -	Reserved.....	57
Regulation 3.01.270(1)(d) -	Sale of business by owner .....	57
Regulation 3.01.270(1)(e) -	Reserved.....	58
Regulation 3.01.270(2) -	Reserved .....	58
Regulation 3.01.280 -	Reserved.....	58
Regulation 3.01.290 -	Reserved.....	58
Regulation 3.01.300(1) -	Reserved .....	58
Regulation 3.01.300(2) -	Reserved .....	58
Regulation 3.01.300(3) -	Reserved .....	58
Regulation 3.01.300(4) -	Reserved .....	58
Regulation 3.01.310 -	Reserved.....	58
Regulation 3.01.320 -	Reserved.....	58
Regulation 3.01.330(1) -	Reserved .....	58
Regulation 3.01.330(2) -	Reserved .....	58
Regulation 3.01.340 -	Reserved.....	58
Regulation 3.01.350 -	Reserved.....	58
Special Regulations -	Reserved.....	60

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Unless otherwise noted, all references herein to Chapter 3.01 or to any Section or subsection shall refer to Chapter 3.01 of the City of Lakewood Municipal Code.

<b>Regulation 3.01.010</b>	<b>Reserved.</b>
<b>Regulation 3.01.020(1)</b>	<b>Reserved</b>
<b>Regulation 3.01.010(2)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(3)</b>	<b>Auction or Auction Sale</b>

"Auction" or "Auction sale" includes any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer when such auctioneer is acting as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in section 3.01.020 of Chapter 3.01 of the City Code, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property which is exempt under the provisions of Section 3.01.180 of Chapter 3.01 of the City Code, is a retailer or vendor as defined in subsection 3.01.020 of Chapter 3.01 of the City Code, and the sale made by him is a retail sale, as defined in subsection 3.01.020 of Chapter 3.01 of the City Code, and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by subsection 3.01.020 of Chapter 3.01 of the City Code.

Every auctioneer acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, customhouse permit, or warehouseman's receipt for delivery of any tangible personal property, or who is entrusted with possession of any such personal property for the purpose of sale shall be deemed to be the owner thereof, and upon the sale of such property, shall be required to collect the tax, file a return, and remit the tax thereon. (See Section 3.01.130 A.)

A sale by an auctioneer when acting for a known or disclosed and properly licensed principal shall be deemed to be a sale by the principal. The principal shall be responsible for collecting and remitting the tax and filing the return.

This Regulation applies to lien holders, including storagemen, pawnbrokers, mechanics and artisans who sell at auctions.

Gross receipts from retail sales by an auctioneer at his established auction house, sales yard or other place of business are taxable, regardless of how the property may have been acquired or by whom it may be owned, and the auctioneer is required to obtain a sales tax license.

<b>Regulation 3.01.020(3.5)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(4)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(5)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(5.5)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(6)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(7)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(8)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(9)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(10)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(11)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(11.5)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(12)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(12.5)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(13)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(14)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(15)</b>	<b>Reserved</b>
<b>Regulation 3.01.0(16)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(17)</b>	<b>Doing business in the City</b>

"Doing business in the City" under Section 3.01.020of the City Code requires that the person obtain a City sales tax license.

**Regulation 3.01.020(18)      Farmer or Rancher**

In a “Farm close-out sale, a farmer or rancher may retain ownership of his improved and unimproved real property and his personal property not used in the farming or ranching operations and still be eligible for this exemption if he is abandoning his farming or ranching operations.

**Regulation 3.01.020(19)            Reserved**

**Regulation 3.01.020(20)        Reserved**

**Regulation 3.01.020(21)        Food – Bakers, Caterers, Drug Stores, Restaurant & Liquor**  
“Food.”

- (1.) Baker or Pastry Shops: All food and drink sold by bakeries or pastry shops shall be subject to sales tax.
- (2.) Caterers: All food and drink sold by caterers shall be subject to sales tax.
- (3.) Drug Stores: All food and drink sold by drug stores shall be subject to sales tax.
- (4.) Restaurants, Snack Bars, Carryouts, and Similar Establishments: All food and drink sold by restaurants and similar establishments shall be subject to sales tax.
- (5.) Delicatessens: All food and drink sold by delicatessens shall be subject to sales tax.
- (6.) Grocery Stores: All food and drink sold by grocery-type food stores shall be subject to sales tax.
- (7.) Liquor Stores: All food and drink sold by liquor stores, including ice and mixes, shall be subject to sales tax.
- (8.) Street Vendors: By the very nature of their operation, street vendors shall be subject to sales tax on all their sales.
- (9.) Vending Machines: All sales of food and drink vended through coin-operated machines shall be subject to sales tax except that vending machine sales of thirty cents (\$.30) or less shall be exempt.
- (10.) Tangible personal property specifically excluded from the "food" definition in Section 3.01.020 of Chapter 3.01 of the City Code is subject to sales tax when purchased at retail unless otherwise exempted in Section 3.01.180 of Chapter 3.01 of the City Code.

**Regulation 3.01.020(22.5)    Gross Taxable Sales**

"Gross taxable sales" means the gross sales of a person during any given reporting period,

(a)    excluding:

- (1)    The sales price of any property returned during the period after the sales price has been included in taxable sales, but only after the full sales price including the tax has been refunded by cash or credit;
- (2)    Sales exempt from the sales tax;
- (3)    The fair market value of property taken in exchange by a retailer for resale in the usual course of his business;
- (4)    Any worthless account actually charged off for income tax purposes during the reporting period to the extent that such account has been included in taxable sales, except that a loss from a worthless check in excess of the taxable sale is not allowed as a bad debt deduction for the excess (See Section 3.01.170); and

(b)    Including any recovery of a bad debt previously deducted from gross sales to determine taxable sales.

See Regulation 3.01.160 for credit sales.

Adjustments in a sales price, such as allowable discounts, rebates and credits, cannot be anticipated, i.e., the tax must be based upon the original price unless the adjustments actually have been made prior to the filing of the return wherein such sale is reported. If the price upon which the tax was computed and paid to the City by the vendor is subsequently adjusted prior to payment of the tax by the purchaser, however, a proper credit may be taken by the vendor against the tax due on the next return.

No credit for discount shall be allowed to a vendor unless the related decrease in sales tax actually is passed on to the purchaser.

A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

If any vendor makes overpayment of the tax or is entitled to a credit on his tax payments because of mistake, errors or canceled sales, credit for the amount of overpayment may be taken by the vendor on a subsequent return, but if the vendor is no longer engaged in business, then he should apply for a refund. (See Regulation 3.01.250 C.)

If any sold article is returned to the vendor for adjustment, replacement or exchange under a guarantee as to quality or service, and if another article is substituted pursuant to the guarantee free or at a reduced price, then the tax shall be recomputed on the actual amount paid to the vendor for the substituted article, taking into consideration any other adjustments made at the time of the replacement.

<b>Regulation 3.01.020(22.6)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(22.7)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(23)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(24)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(24.3)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(24.5)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(25)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(26)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(26.1)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(26.2)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(26.3)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(27)</b>	<b>Purchase price</b>

"Purchase price" includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value in exchange, but not for resale, in the usual course of the retailer's business.
- (3) Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

- (4) The total price charged on credit sales including finance, service and other charges that are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note, except that the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.
- (5) Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery to the purchaser if the sales agreement requires such delivery to consummate the sale. Generally, charges for transportation to the place where title is to pass are included in the purchase price, and charges for transportation after title passes are not included. The determining factor is the agreement between the vendor and the purchaser. The manner of payment of the transportation charges does not control but may be evidence of the sales agreement. An actual discount given to a purchaser based on freight charges may be deducted from the gross price billed.
- (7) Indirect federal manufacturer's excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon. (See Regulation 3.01.140 A..)

"Purchase price" does not include the fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This interpretation is not limited to exchanges in the City. Trade ins outside the City are an allowable adjustment to the purchase price. Mathews v. State of Colo., Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

<b>Regulation 3.01.020(27.1)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(28)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(29)</b>	<b>Retail sales, purchase at retail or selling at retail</b>

"Retail sale" or "purchased at retail" or "selling at retail" includes all sales of tangible personal property and the sales of those services specifically enumerated in Chapter 3.01 as taxable, including: (i) telecommunication services; (ii) gas, electric and steam services; (iii) pay television services; (iv) security system and sound system services; (v) linen services; (vi) warranty and maintenance services; (vii) modified or customized computer program services; (viii) services providing admission or access to motion picture performances and to establishments which are licensed to serve malt, vinous or spirituous liquors; and (ix) services providing rooms or accommodations or lodging. All such sales are subject to the tax imposed by Chapter 3.01. A retail sale is a sale to the user or consumer of such tangible personal property or service. "Retail sale" does not include a wholesale sale. A retail sale is a sale to the user or consumer of such tangible personal property or service whether such sale is between a licensed vendor and a vendee or between private parties.

<b>Regulation 3.01.020(29.1)</b>	<b>Reserved</b>
<b>Regulation 3.01.020(29.2)</b>	<b>Room, Accommodation</b>

A "room" is a regular sleeping room or unit which is a part of a hotel, apartment hotel, inn, lodging house, guest house, motor hotel, motel, mobile home, dude ranch, or guest ranch for which a charge is made for its use.

"Accommodation" includes the furnishing of space in any camp grounds, auto camp, trailer court or park under any concession, permit, right of access, license to use, or any other agreement by or through which any such space may be used or occupied. Accommodations are exempt from taxation if rented for at least thirty (30) consecutive days during the calendar year or preceding year. (See Regulation 3.01.180 E.)

**Regulation 3.01.020(30)            Sale or sale and purchase**

"Sale" or "sale and purchase" shall mean any transaction whereby a person, in exchange for any consideration, such as money or its equivalent, property, the rendering of a service, or any promise thereof: (i) transfers or agrees to transfer all or part of his interest, or the interest of any other for whom he is acting as an agent, in any tangible personal property to any other person; or (ii) performs or furnishes, or agrees to perform or furnish, or contracts to have another perform or furnish, any service taxable under Chapter 3.01 for any other person. Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.

A bona fide gift of tangible personal property is not a "sale."

**Regulation 3.01.020(30.1)            Reserved**

**Regulation 3.01.020(31)            Reserved**

**Regulation 3.01.020(31.1)            Reserved**

**Regulation 3.01.020(31.2)            Reserved**

**Regulation 3.01.020(32)            Reserved**

**Regulation 3.01.020(33)            Reserved**

**Regulation 3.01.020(34)            Tangible personal property**

"Tangible personal property" embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, and capable of being possessed and exchanged. Tangible personal property does not include real property, such as land and buildings, nor tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, irremovable without damage to the premises. Property severed from real estate becomes tangible personal property.

"Tangible personal property" does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or membership, or redeemable United States postage or revenue stamps sold for postage or revenue purposes. "Tangible personal property" also does not include water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.

**Regulation 3.01.020(35)                      Specific statutory exemptions**

“Tax.”

Except in the case of specific statutory exemptions, the retail sales tax is imposed upon the sale of tangible personal property to the user or consumer in this City and also upon the sale of those services specifically enumerated in Chapter 3.01 as taxable, including: (i) telecommunication services; (ii) gas, electric and steam services; (iii) pay television services; (iv) security system and sound system services; (v) linen services; (vi) warranty and maintenance services; (vii) modified or customized computer program services; (viii) services providing admission or access to motion picture performances and to establishments which are licensed to serve malt, vinous or spirituous liquors; and (ix) services providing rooms or accommodations or lodging. This tax is imposed upon the transaction called the sale and is applicable whether the transaction is between a licensed vendor and a vendee or between private parties.

- Regulation 3.01.020(35.1)                      Reserved**
- Regulation 3.01.020(35.2)                      Reserved**
- Regulation 3.01.020(35.3)                      Reserved**
- Regulation 3.01.020(36)                      Taxpayer**

"Taxpayer" means any person obligated to make a return and to pay over to the Finance Director the tax collected or to be paid under the provisions of Chapter 3.01, whether such person is a retailer, consumer or purchaser. J.A. Tobin Construction Co. v. Hugh H.C. Weed, Jr., 158 Colo. 430, 407 P.2d 350 (1965).

- Regulation 3.01.020(37)                      Reserved**
- Regulation 3.01.020(37.1)                      Reserved**
- Regulation 3.01.020(38)                      Reserved**
- Regulation 3.01.020(39)                      Wholesale sale**

"Wholesale sale" means all sales of tangible personal property or specified services to a licensed retail merchant, jobber, dealer, or wholesaler that purchases the property for resale, and all sales of tangible personal property or services specified in Section 3.01.120 of the City Code to manufacturers and compounders that incorporate such tangible personal property or service into a substance, commodity or product for resale.

All sales to the user or consumer of tangible personal property or services specified in Section 3.01.120 of the City Code are taxable retail sales, regardless of the purchaser's trade or business. A reporting form shall be furnished annually to wholesalers to report such retail sales.

It is the duty of the vendor to collect the tax unless he is furnished with satisfactory proof that the sale is exempt under Chapter 3.01. Also, it is the duty of the vendor to obtain the sales or store license number or other satisfactory proof if the purchase is for resale. In case of doubt, the Finance Department should be contacted, or the tax should be collected.

It shall be presumed that any purchaser not having a valid sales tax license or store license is the ultimate user or consumer of any property that is purchased. Any sale to such a person shall be a taxable retail sale regardless of the disposition of the property sold, unless the vendor can establish that the purchase was for resale in the ordinary course of the vendee's business.

<b>Regulation 3.01.030(1)</b>	<b>Reserved</b>
<b>Regulation 3.01.030(2)</b>	<b>Reserved</b>
<b>Regulation 3.01.030(3)</b>	<b>Reserved</b>
<b>Regulation 3.01.030(4)</b>	<b>Reserved</b>
<b>Regulation 3.01.030(5)</b>	<b>Reserved</b>
<b>Regulation 3.01.040</b>	<b>Duty to collect tax</b>

Every retailer or vendor, except one selling malt, vinous or spirituous liquors by the drink and electing to include the tax in the selling price, and except vending machine operators, shall collect sales tax on all taxable sales as an item separate and distinct from the selling price. It is unlawful for a vendor, with the above exceptions, to hold out or state, directly or indirectly, that the tax or any part thereof shall be assumed, absorbed or refunded by the vendor or that the tax shall not be added to the purchase price.

<b>Regulation 3.01.050</b>	<b>Reserved</b>
<b>Regulation 3.01.060</b>	<b>Reserved</b>
<b>Regulation 3.01.065</b>	<b>Record Keeping</b>

(a) General.

It is the duty of every Taxpayer, and the duty of every lessor and lessee of tangible personal property for use in the City to keep adequate and complete records. Unless the Finance Department authorizes an alternate method of recordkeeping in writing, these records should show:

- (1) Gross receipts from sales or rental payments from leases of tangible personal property (including any services that are a part of the sale or lease) made in the City, irrespective of whether the seller or lessor regards the receipts to be taxable or nontaxable.
- (2) All deductions allowed by law and claimed in filing returns.
- (3) Total purchase price of all tangible personal property purchased for sale, consumption or lease in the City.

These records must include the normal books of account maintained by the ordinarily prudent business person engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

(b) Microfilm records.

Records may be microfilmed. Microfilm reproductions of general books of account, however, such as cash books, journals, voucher registers, ledgers, and similar items are not acceptable as original records. Where microfilm reproductions of supporting records

are maintained, such as sales invoices, purchase invoices, credit memoranda, and similar items, the following conditions must be met:

- (1) Appropriate facilities must be provided for preservation of the films for the required periods.
- (2) Microfilm rolls must be indexed, cross-referenced, and labeled to show the beginning and ending numbers and to show the beginning and ending alphabetical listing of documents included and must be systematically filed.
- (3) The Taxpayer must agree to provide transcriptions of any information contained on microfilm that may be required for verification of tax liability.
- (4) Proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records.

A posting reference must be on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bill of lading and purchase orders, must be maintained in an order which can be readily related to the transaction for which exemption is sought.

(c) Records prepared by automated data processing systems.

An ADP tax accounting system must be capable of producing visible and legible records for verification of the Taxpayer's tax liability.

- (1) Recorded or reconstructible data.

ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time that they are processed, then the system must have the ability to reconstruct these transactions.

- (2) General and Subsidiary Books of Account.

A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are

used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.

(3) **Supporting Documents and Audit Trail.**

The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Finance Department upon request. The system should be designed so that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and similar items are readily available.

(4) **Program Documentation.**

A description of the ADP portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate: (A) the application being performed; (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams, or other satisfactory description of the input or output procedures); and (C) the controls used to ensure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

(d) **Record Retention.**

All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three (3) years.

(e) **Examination of Records.**

All of the foregoing records must be made available for examination on request by the Finance Director or his authorized representatives.

(f) **Coordinated Audit Procedure.**

(1) Any taxpayer licensed in the City pursuant to Chapter 3.01, Section 3.01.110 and holding a similar sales tax license in at least four (4) other Colorado

municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

- (2) Within 14 days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the finance director of this City, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the vendor holds a current sales tax license and a declaration that the vendor will sign a waiver of any passage-of-time based limitation upon the City's right to recover tax owed by the taxpayer for the audit period.
- (3) Except as provided in paragraph (7), any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the three year statute of limitations may be audited by this City during the succeeding twelve month period only through a coordinated audit involving all municipalities electing to participate in such an audit.

- (4) If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (3), the finance director shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten days after receipt of the taxpayer's request for a coordinated audit. The finance director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.
- (5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the City's finance director shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The finance director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the vendor's premises to conduct the coordinated audit on behalf of the participating municipalities.
- (6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the City's finance director shall, once arrangements for the coordinated audit between this City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The finance director shall also propose a schedule for the coordinated audit.
- (7) The coordinated audit procedure set forth in this section shall not apply:
  - (i) When the proposed audit is a jeopardy audit.
  - (ii) To audits for which a notice of audit was given prior to the effective date of this section.
  - (iii) When a taxpayer refuses to promptly sign a waiver of the three year statute of limitation.

- (iv) When a taxpayer fails to request the coordinated audit within the specified time.

<b>Regulation 3.01.070</b>	<b>Reserved.</b>
<b>Regulation 3.01.075</b>	<b>Reserved.</b>
<b>Regulation 3.01.076</b>	<b>Reserved.</b>
<b>Regulation 3.01.080</b>	<b>Reserved.</b>
<b>Regulation 3.01.090</b>	<b>Reserved.</b>
<b>Regulation 3.01.100</b>	<b>Reserved.</b>
<b>Regulation 3.01.110(1)(a)</b>	<b>Reserved.</b>
<b>Regulation 3.01.110(1)(b)</b>	<b>Reserved.</b>
<b>Regulation 3.01.110(2)</b>	<b>Reserved.</b>
<b>Regulation 3.01.110(3)</b>	<b>Reserved.</b>
<b>Regulation 3.01.110(4)</b>	<b>Reserved.</b>
<b>Regulation 3.01.110(5)</b>	<b>Reserved.</b>
<b>Regulation 3.01.110(6)</b>	<b>Reserved.</b>
<b>Regulation 3.01.120(1)</b>	<b>Tax imposed upon the purchaser</b>

Unless otherwise exempt, all sales of tangible personal property at retail in the City, whether between a licensed vendor and a vendee or between private parties, are subject to the imposition of the sales tax. "Tangible personal property" is defined in Section 3.01.020(34).

The tax is imposed upon the purchaser. However, if the transaction involves a licensed vendor, then the duty is imposed upon the vendor to add the tax to the sales price and to collect and remit the tax to the City. In the event that a licensed vendor fails to collect the appropriate sales tax, the Finance Directors, at his option, may assess the tax due against the vendor or the purchaser. If no licensed vendor is involved in the transaction, or if the vendor fails to collect the sales tax, then the purchaser shall pay the sales tax directly to the City. J. A. Tobin Construction Co. v. Hugh H. C. Weed, Jr., 158 Colo. 430, 407 P.2d 350 (1965).

**Regulation 3.01.120(2) Trade in of Tangible personal property**

When a trade-in of tangible personal property is received by a retailer upon the sale of tangible personal property, the tax imposed by Section 3.01.140 shall be based upon the purchase price of the tangible personal property sold, less the trade-in allowance, provided that the property taken in trade is to be resold in the usual course of the retailer's trade or business. This rule is not limited to exchanges in the City. Trade-in's outside the City are an allowable adjustment to the purchase price. Mathews v. State of Colorado, Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

**Regulation 3.01.120(C) Telecommunication: Intrastate, Mobile & Data**

- (1) Intrastate telecommunication service furnished within the City is subject to the tax imposed by Section 3.01.140, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes access services, additional listings, joint-user service, nontalking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, and any other charges assessed or passed on to the consumer. Telephone service is taxable where either local or toll calls are made or telegrams are sent from telephone pay stations.
- (2) a. In accordance with 4 U.S.C. Secs. 116 to 126 of the Mobile Telecommunications Sourcing Act, the City may only impose a sales tax on Mobile Telecommunications service taxable within the geographical boundaries of the City if the customer's Place of Primary Use is within the geographical boundaries of the City.
  - b. Any customer that believes a tax, charge, or fee assessed by the City in the customer's bill for Mobile Telecommunications Services is erroneous, or that an assignment of Place of Primary Use or taxing jurisdiction on said bill is incorrect, shall notify the Home Service Provider in writing within two years after the date the bill was issued. The notification from the customer shall include the street address for the customer's Place of Primary Use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the Home Service Provider may require. No later than sixty days after receipt of notice from a customer, the Home Service Provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the Home Service Provider determines that an error was made, the Home Service Provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the Home Service Provider determines that no error was made, the Home Service Provider shall provide a written explanation of its determination to the customer.

c. Any customer that believes that a tax, charge, or fee assessed by the City in the customer's bill for Mobile Telecommunications services is erroneous, or that an assignment of Place of Primary Use or taxing jurisdiction on said bill is incorrect may file a claim in the appropriate District Court only after complying with the provisions of this Regulation 3.01.120 (C)(2).

(3) Electronic Database.

a. The State may provide an electronic database to a Home Service Provider or, if the State does not provide such an electronic database to a Home Service Provider, then the designated database provider may provide an electronic database to a Home Service Provider.

b. Such electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12, that, allowing for de minimis deviations, designates for each street address in the State, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code.

i. Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions, which are not taxing jurisdictions when reasonably needed to determine the property-taxing jurisdiction.

ii. The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission or their successors. Each address shall be provided in standard postal format.

iii. The State or designated database provider that provides or maintains an electronic database described in subsection (i) shall provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers.

(4) User Held Harmless - A Home Service Provider using the data contained in an electronic database described in section 3(b) above shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the State or designated database provider. The Home Service Provider shall reflect changes made to such database during a calendar quarter not later than 30 days after the end of such calendar quarter for each State that issues notice of the availability of an electronic database reflecting such changes.

(5) Safe Harbor.

a. If neither the State nor designated database provider provides an electronic database, a Home Service Provider shall be held harmless from any tax, charge, or fee liability in the State that otherwise

would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, the Home Service Provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the Home Service Provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 121 of the Mobile Telecommunications Sourcing Act is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a Home Service Provider has exercised due diligence if such Home Service Provider demonstrates that it has: (1) expended reasonable resources to implement and maintained an appropriately detailed electronic database of street address assignments to taxing jurisdictions; (2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and (3) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporation, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

Correction of Erroneous Data for Place of Primary Use.

The City or State on behalf of the City, may:

a. determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges or fees for mobile telecommunications services are remitted does not meet the definition of Place of Primary Use and give notice to the Home Service Provider to change the Place of Primary Use on a prospective basis from the date of notice of determination if: (a) the City obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination, and (b) before the City gives such notice of determination, the customer is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the address is the customer's place of Primary Use;

b. determine that the assignment of a taxing jurisdiction by a Home Service Provider does not reflect the correct taxing jurisdiction and give binding notice to the Home Service Provider to change the assignment on a prospective basis from the date of notice of determination if: (a) the City obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and (b) the Home Service Provider is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

**Regulation 3.01.120(3)(b)      Reserved**

**Regulation 3.01.120(4)(a)      Gas, Electric & Steam services furnished**

Gas or electric service furnished within the City is subject to the tax imposed by Section 3.01.140, whether furnished by public, private, mutual, cooperative, or governmental corporations or enterprises for domestic or commercial use. The tax attaches to all amounts paid by the user or consumer for gas or electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

Steam, whether furnished for domestic, commercial, or industrial use, by public, private, mutual, cooperative, or governmental corporations or enterprises, is subject to the tax imposed by Section 3.01.140 unless purchased for resale in its original form.

(See Regulation 3.01.180(21) for certain limited exemptions.)

**Regulation 3.01.120(4)(b) Gas & Electric used by residences**

Gas and electricity is used by occupants of residences if the gas or electricity is used by such occupants exclusively for domestic purposes such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, townhouse or mobile/trailer home used exclusively for domestic purposes. Residential use of gas and electricity includes service to a building appurtenant to the residence, including garages, barns, and other minor buildings for use of the residents served through the residential meter.

Users in a private home or individual living unit, such as apartments, condominiums, townhomes, and mobile/trailer homes, who are served through a sign meter and whose rate has been classified by P.U.C. statute or regulations as residential are subject to sales tax.

Users in multi-unit apartments, mobile/trailer home parks or condominium and townhouse associations who are billed through a master meter and are taking service under a commercial rate are subject to sales tax if the gas or electricity is used for residential use as defined herein.

Sales of butane, propane, fuel oils, coal, coke or wood are subject to sales tax if used for residential use as defined above.

**Regulation 3.01.120(5)(a) Food**

Tangible personal property specifically excluded from the "food" definition in Section 3.01.020(21) of Chapter 3.01 of the City Code is subject to sales tax when purchased at retail unless otherwise exempted in Section 3.01.180 of Chapter 3.01 of the City Code.

**Regulation 3.01.120(5)(b) Nontaxable gratuities**

Nontaxable gratuities include cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to the sales check by the patron for use of those providing the service), banquet tips and tips separately stated and added to the sales check by the vendor at a flat rate, and the amount is distributed by the vendor to the persons who actually render the service.

**Regulation 3.01.120(6) Accommodation or Lodging payments or Deposit**

Amounts paid for the use of furnished rooms or accommodations or lodging, as defined under Section 3.01.020(29.2), are subject to the tax imposed under Section 3.01.140 unless the rental period is for a term of thirty (30) consecutive days or more, in which case the rental paid is exempt. (See also Section 3.01.180(6) and Regulation 3.01.180(6).)

Deposits paid for rooms or accommodations or lodging are not taxable when paid in advance. When rooms or accommodations or lodging are furnished, then any deposits previously paid are taxable. If rooms or accommodations or lodging are not furnished, then any deposits previously paid are taxable to the extent that such deposits are not refunded to the customer.

**Regulation 3.01.120(7) Reserved**

**Regulation 3.01.120(8) Registration, licensing or title of auto's transferred by gift**

The collection of sales tax as provided in Section 3.01.120(8) does not apply to the registration, licensing or titling of automotive vehicles transferred by gift or operation of law or where the transaction is otherwise exempt from the imposition of sales tax. See Regulation 3.01.020(30) for bona fide gifts.

**Regulation 3.01.120(9) Reserved**

**Regulation 3.01.120(10) Security system services**

Security system services includes the amount paid or charged for electronic monitoring whether the system is leased, rented or owned. Any amount paid or charged for installation of a security system would not be subject to sales tax, if separately stated.

All materials and equipment used in providing such services that are located inside the City are subject to use tax, if the requisite sales tax has not been paid. If title of the material or equipment is transferred to the customer, then the material or equipment is deemed a retail sale and subject to the City sales tax. Sales of material and equipment are considered separate and distinct retail transactions from the charges for security system services.

**Regulation 3.01.120(11)      Reserved**

**Regulation 3.01.120(12)      Warranty & Maintenance contracts**

If a separate warranty, service or maintenance contract is purchased at the time of acquiring tangible personal property or subsequent to the purchase of tangible personal property, regardless of whether the tangible personal property is rented, leased or purchased, then the entire sales price of the warranty, service or maintenance contract is subject to sales tax.

When an item of tangible personal property is rented with a warranty for the maintenance or servicing of the property for a given period of time, then the sales tax shall be imposed, collected, and paid upon the rentals payable, including the value of the warranty, if the rental is subject to the sales tax under the provisions of Section 3.01.120(9).

**Regulation 3.01.120(13)      Modified or Customized software**

"Modified or customized computer program" services include, but are not limited to, analysis of the customer's requirements, consulting, programming, testing, and updates, regardless of which vendor supplies each of the services.

The internalized instruction code which controls the basic operations (i.e., arithmetic and logic) of the computer causing it to execute instructions contained in system programs is an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are subject to sales tax. It is immaterial that the vendor does or does not charge separately for such internal code systems.

A program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his electronic data processing system.

The program may be in the form of:

- (1) System programs (except for the instruction codes which are considered tangible personal property as described above that control the hardware itself and allow it to compile, assemble, and process application programs).
- (2) Applications programs that are created to perform business functions or to control or to monitor processes.

- (3) Pre-written programs (canned programs) that are either systems programs or application programs and are not written specifically for the user.
- (4) Custom programs: programs created specifically for the user.

Section 3.01.020(24.5) defines a "modified or customized computer program" as meeting the following elements:

- (a) the preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by any vendor; and
- (b) the program must be created or requires adaptation by any vendor to be used in a specific output device. One example, a vendor offers for sale a pre-written sort program which can be used in several computer models. Prior to operation, instructions must be added by any vendor which specify the particular computer model in which the program shall be utilized.

In subsections (4)(a)(b) above "vendor" includes, but is not limited to, a vendor from whom the program is acquired, or who provides consulting, or who provides programming.

Programs, meeting the criteria in (a) and (b) above, whether placed on cards, tape, disc pack, or other machine readable media or entered into a computer directly are modified or customized programs and are subject to tax pursuant to Section 3.01.120(13).

Programs which do not meet the criteria are subject to sales tax pursuant to Section 3.01.120(1). For example, a software retailer or supplier that sells prepackaged programs for use with home television games or other personal computer equipment, when such programs are fully usable by the customers without modification, is considered to be a vendor of tangible personal property and is subject to sales tax on the purchase price of such property pursuant to Section 3.01.120(1).

Consulting service or analysis time charges are not subject to sales or use tax, if a program is not purchased, modified, or created.

**Regulation 3.01.120(14)      Reserved**

**Regulation 3.01.130(1)(a)      Vendor of tangible personal property**

The vendor of tangible personal property (other than a vending machine operator who is subject to the provisions of Section 3.01.180(24) or a vendor electing to include the tax in the sale price pursuant to Section 3.01.140(3)(b)), acting as an agent for the City, must collect the sales tax on the selling price of commodities and services specified in Chapter 3.01 and account for and remit the full amount of the tax. The vendor is liable for the payment of any amount equal to three percent (3%) of the total amount received from taxable sales made in each month, including all sales made for less than the minimum amount subject to tax.

**Regulation 3.01.130(1)(b)      Filing frequencies**

Approval of requests for quarterly, seasonal, annual, or thirteen-four week reporting periods shall be granted only if, in the opinion of the Finance Director, such approval shall not jeopardize the collection of the tax. Permission to change the time or interval for filing reports and paying tax shall not be granted to a vendor who is delinquent.

If any vendor has been granted permission to file reports and pay tax on other than a monthly basis, and such vendor becomes delinquent, then the permission may be revoked by the Finance Director at any time. Immediately following notice of such revocation, such vendor shall be required to file reports and pay tax, interest and penalties on a monthly basis.

Applications for permission to file reports and pay tax on a quarterly basis, if approved, shall take effect on the first (1st) day of the next calendar quarter which begins at least fifteen (15) days after the date of approval.

If the vendor has an average tax liability of fifteen dollars (\$15) or less per month, then the Finance Director may permit reports to be filed and tax paid on an annual basis. Wholesalers shall be required to report and pay any sales taxes owed on the same basis as any other vendor, but a licensed wholesaler who makes no retail sales can submit a no-tax return on an annual basis.

Application for permission to file reports and pay tax on an annual basis, if approved, shall take effect on January 1 of the next calendar year beginning at least fifteen (15) days after the date of approval. Following the approval by the Finance Director to file on a quarterly or annual basis, the filing of the reports and payments of the tax shall be due on the twentieth (20th) day of the month following the end of the approved reporting period.

If the vendor is engaged in a seasonal business not operated at all in the City during certain months of the year, then he may apply on the prescribed application form for permission to file the reports and remit that tax only for the months of the year in which the business is operated. The applicant shall state the months during which he expects to operate the business in the City and the place or places where the business shall be operated and must notify the Finance Department of any changes thereof.

**Regulation 3.01.130(1)(c)      Filing extensions**

Section 3.01.130(1)(c) gives the Finance Director authority to grant extensions of time for filing sales tax returns, but extensions shall not be granted unless the Taxpayer can show that filing on or before the due date would result in an undue hardship.

**Regulation 3.01.130(1)(d)      Exempt sales documentation**

The vendor must establish that a sale is tax exempt, and he must have records sufficient to demonstrate the validity of the exemption with reference to each sale. Exempt organizations must be able to prove to the satisfaction of the vendor that they are exempt.

If the purchase is represented by the customer to be for resale, it shall be the duty of the vendor to have on file and available to any qualified representative of the Finance Department satisfactory proof that the purchase is for resale and the sales tax account number for any customer representing to the vendor that he is purchasing for resale. The vendor may call the Finance Department to verify that the customer is properly licensed.

**Regulation 3.01.130(1)(e)      Duty of the vendor to collect tax**

It is the duty of the vendor to collect the tax unless he is furnished with satisfactory proof that the sale is exempt under Chapter 3.01.

Whenever there is a disagreement between a vendor and a buyer as to whether a given sale is tax exempt under Chapter 3.01, it shall be the duty of the vendor to collect, and the duty of the buyer to pay the tax. The vendor shall thereupon give to the buyer a receipt (a copy of the sales invoice showing the amount of sales tax collected by the vendor shall usually be sufficient), and the buyer may then make application to the Finance Department for a refund.

**Regulation 3.01.130(1)(f)      Reserved**

**Regulation 3.01.130(2)      Reserved**

**Regulation 3.01.140(1)      Sales / Use tax of manufacturing, producing & fabricating**

Sales and use tax applies to charges for manufacturing, producing, fabricating, and processing tangible personal property which has been made-to-order or tailor-made for the customer. Manufacturing, producing, fabricating, or processing is usually deemed to have occurred when tangible personal property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means.

An operation which restores a used or worn item of tangible personal property to its essentially original form and use is not considered manufacturing, producing, fabricating or processing within the meaning of this Regulation.

The amount charged the purchaser for labor or services rendered in installing and applying purchased tangible personal property is not subject to tax, provided that such amount is separately stated, and such separate statement is not to avoid the tax upon the actual sales price of tangible personal property.

Any person making a sale subject to this Regulation must be licensed and may purchase tax-free all articles of tangible personal property which enter into and become a component part of the article sold. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

**Regulation 3.01.140(2) Imposed sales tax schedule & rounding**

The sales tax imposed pursuant to Section 3.01.140(2) shall be imposed in accordance with the following schedule:

<u>Purchase Price</u>	<u>Lakewood Sales Tax at three percent (3%)</u>
\$0.00 - 0.16	\$.00
0.17 - 0.49	.01
0.50 - 0.83	.02
0.84 - 1.16	.03
1.17 - 1.49	.04
1.50 - 1.83	.05
1.84 - 2.16	.06
2.17 - 2.49	.07
2.50 - 2.83	.08
2.84 - 3.16	.09
3.17 - 3.49	.10
3.50 - 3.83	.11
3.84 - 4.16	.12
4.17 - 4.49	.13
4.50 - 4.83	.14
4.84 - 5.16	.15
5.17 - 5.49	.16
5.50 - 5.83	.17
5.84 - 6.16	.18
6.17 - 6.49	.19
6.50 - 6.83	.20

On all sales in excess of six dollars and eighty - three cents (\$6.83), three cents (\$.03) shall be added for each dollar (\$1.00) in excess of six dollars and eighty - three cents (\$6.83). The sales tax imposed pursuant to Section 3.01.140(1) shall be equivalent to three cents (\$.03) for every dollar of the purchase price. Fractional amounts equal to or greater than one-half cent (\$.005) shall be rounded upward to the next highest cent.

**Regulation 3.01.140(3)(a) Sales tax on multiple items**

If the sale consists of a number of items, each of which has a sales price less than the minimum taxable sale, then sales tax must be collected on the total sales prices of all the items.

Any retailer or taxpayer adding the sales tax imposed by this Chapter 3.01 of the City Code, or the average equivalent thereof, to the sale price or charge for tangible personal property and taxable services, in addition to showing such tax as a separate and distinct item to the customer must provide the customer with a receipt showing and identifying the purchase price and sales tax charged as separate items on such receipt, including the total rate of sales tax charged.

**Regulation 3.01.140(3)(b) Taxation of malt, vinous or spirituous liquors**

A vendor who sells malt, vinous or spirituous liquors by the drink shall at the time of making his first retail sale of such beverage, elect either of the following methods to impose the tax:

- (a) The tax may be included in the price of the drink; or
- (b) The tax may be separately stated and added to the price of the drink.

The vendor may elect to operate under method (a) for drinks sold at the bar and method (b) for drinks sold at the tables, or he may elect to operate under the same method for drinks sold at the bar and tables. Once having made the election, he must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the Finance Department. If the vendor elects to use different methods on bar and table sales, he must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the Finance Department. If the vendor elects to use different methods on bar and table sales, then he must keep adequate records.

If the vendor elects to include the tax in the price of the drink, the following method must be used to determine taxable sales: exempt sales are deducted from gross sales, and the difference is divided by the total of one hundred percent (100%) plus the applicable sales tax percentage.

Vendors dispensing liquor, wine or beer by the drink, who purchase ingredients which they use in mixing the drink, are not required to pay sales tax on the purchase of such ingredients.

**Regulation 3.01.150****Multiple location / Consolidated filing**

A retailer required to collect tax imposed under Section 3.01.140 who is doing business in two or more locations within the City may:

- (1) File a separate sales tax return for each business location within the City; or
- (2) File a consolidated sales tax return covering all business locations within the City. If consolidated sales tax returns are filed, then the retailer must complete and return all accompanying supplemental schedules if required by the Finance Director.

Undercollections and overcollections may not be offset. See Regulation 3.01.130(1)(a).

**Regulation 3.01.160(1)****Credit card sales**

This Regulation deals only with credit sales. Credit card sales are cash sales not credit sales. Cash sales must be reported currently.

For the purpose of this Regulation, a "credit sale" is a retail sale that is created by a time payment plan, a conditional sale, or a sale secured by a chattel mortgage whereby the remittance of the full selling price is to be paid at a future date.

If the retailer elects to report the credit sales on the cash basis, then he must keep adequate and complete records to show separately the sales price of the tangible personal property, the sales tax applicable to each credit sale, and any interest, insurance or carrying charges that have been added to the sale.

If the retailer reports the credit sale on the accrual basis, then he shall include the selling price in the return for the month in which the sale was made and remit the entire applicable sales tax.

The retailer on the accrual basis is allowed a deduction for bad debts on the taxable portion of worthless credit sales. No deduction for bad debts is allowable when the retailer is reporting his taxable sales on the cash basis.

When a repossessed article is resold, the transaction constitutes an entirely new, separate and distinct sale upon which the sales tax shall be collected in the regular manner.

A cash discount allowed for payment on or before a given date is not an allocable adjustment to the selling price in determining taxable sales.

**Regulation 3.01.160(2)**            **Reserved**

**Regulation 3.01.170**            **Reserved**

See Regulation 3.01.020(22.5).

**Regulation 3.01.180(1)**            **Sales to the United States Government, State or Local**

There is no sales tax on sales to the United States government and to the State, or any department, institution, or subdivision of the federal or State government, when purchased within its governmental capacities. To secure exemption from the sales tax, the order for the goods must be on a prescribed government form or purchase order and paid for directly to the seller by warrant or check drawn on governmental funds.

**Regulation 3.01.180(2)**

**Sales to charitable organization / exemptions**

There is no sales tax on articles sold to charitable organizations in the conduct of their regular charitable functions and activities. To determine whether an organization qualifies for the exemption so that the Finance Department may issue an exemption certificate, the following information must be submitted to the Finance Department by the organization:

- (1) A copy of the organization's federal exemption letter; and
- (2) The organization's financial statement showing the source of funds and its expenditures.

A charitable organization which makes repeated sales of tangible personal property to the public and otherwise meets the definition of a retailer must have a sales tax license and collect and remit tax in the same manner as any other retailer. The fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable purposes does not make the sale exempt from tax.

Whenever a charitable organization, not holding a State store license or a City sales tax license, purchases tangible personal property (such as cards, cookies, candies, food, religious articles, and similar items) which is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance, then the organization's exempt status does not apply, and sales tax must be paid to the vendor by the exempt organization. If such purchases are made outside the City or in the City without payment of the City sales tax, then the tax must be paid directly to the City by the organization.

Purchases by a nonprofit organization or association are subject to the tax if they are not charitable organizations.

**Regulation 3.01.180(3)****Constitutional, Delivery & Railroad seals exemption**

- (1) All sales which the City is prohibited from taxing under the constitution or laws of the United States or the State or under the City's charter are exempt, including sales to ambassadors, consuls, and their employees who are citizens of the nation that they are representing.
- (2) Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional.
- (3) Sales of tangible personal property located within the City at the time of sale and delivered within the City are taxable, irrespective of the ultimate destination of the property sold, or where the parties to the contract of sale are located, or where the contract was made or accepted or the funds paid.
- (4) Sales of tangible personal property located within the City at the time of sale and delivered to the purchaser by the vendor or by common carrier to a destination outside the City for use outside the City are not taxable. Vendor's shipping records, bills of lading, or other proof satisfactory to the Finance Director must be retained to substantiate any exemption allowed for such sales in interstate commerce.
- (5) Sales of merchandise ordered for delivery in the City are not necessarily exempt even though the merchandise may be shipped from outside the City directly to the purchaser or indirectly through the vendor.
- (6) All sales to railroads, except as provided in Section 3.01.180(10), and to other common carriers doing an interstate business, to telecommunication companies, and to all other agencies engaged in interstate commerce are taxable in the same manner as are sales to other persons.

**Regulation 3.01.180(4)****Cigarette / Tobacco**

"Cigarette" is defined as a well-known, recognized, and definite article consisting of tobacco of a peculiar kind distinguished by its light color and mildness and rolled in a paper wrapper. "Cigarette" does not include an article consisting of a cylindrical roll of cigar-leaf tobacco.

The sale of any tobacco product that is not a cigarette is subject to sales tax.

**Regulation 3.01.180(5) Prescription**

A "prescription" means any order in writing, dated and signed by a practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom a medicine or drug is offered and directions, if any, to be placed on the label.

**Regulation 3.01.180(5.1) Reserved**

**Regulation 3.01.180(6) Permanently occupied room / Accommodation**

Rooms and accommodations permanently occupied are exempt. "Permanently occupied" is defined by Section 3.01.180(6) as occupancy for a period of thirty (30) or more consecutive days.

"Written agreement" includes a hotel registration or a rent receipt. A canceled check by itself shall not qualify as a written agreement.

**Regulation 3.01.180(7) Sales to schools - Exemptions**

Sales to "Schools" as defined under Section 3.01.020(31), are exempt from sales tax. If a school is conducted for private or corporate profit, sales thereto are subject to the sales tax.

**Regulation 3.01.180(8) Reserved**

**Regulation 3.01.180(9) Reserved**

**Regulation 3.01.180(10) Reserved**

**Regulation 3.01.180(11) Reserved**

**Regulation 3.01.180(12) Reserved**

<b>Regulation 3.01.180(13)</b>	<b>Reserved</b>
<b>Regulation 3.01.180(14)</b>	<b>Reserved</b>
<b>Regulation 3.01.180(15)</b>	<b>Reserved</b>
<b>Regulation 3.01.180(16)</b>	<b>Reserved</b>
<b>Regulation 3.01.180(17)</b>	<b>Reserved</b>
<b>Regulation 3.01.180(18)</b>	<b>Contractors and subcontractors</b>

Contractors and subcontractor should be aware that the exemption for charitable organizations applies only to those that qualify under Section 3.01.020(5) and to schools, as defined in Section 3.01.020(31).

Every contractor or subcontractor shall apply for a certificate of exemption prior to the time that the work is started. Every contractor or subcontractor shall also obtain the exemption number from the exempt organization for whom the work is performed.

**Regulation 3.01.180(19)**      **Reserved**

**Regulation 3.01.180(20)**      **Containers, label or shipping case / Manufacturing aids**

The sale of tangible personal property to a person engaged in the manufacture or compounding of a product or service, where such tangible personal property becomes a physical part of such product or service, is a wholesale sale and exempt from sales tax. Any container, label or shipping case used to encase or enclose such product may be purchased tax-free by the manufacturer or compounder.

Sales tax applies to the sale of tangible personal property to the manufacturer or compounder that purchases it for use as an aid in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment, and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

"For all the reasons we have heretofore mentioned we must conclude that to be exempt from the operation of the acts, tangible personal property purchased by manufacturer and which enters into the processing of the manufactured product, must be a constituent part thereof, wholly or partially, by either chemical or mechanical means . . . ."

"Applying these definitions to the words under consideration, it would seem certain they mean that to enter into the processing of an article, substance or commodity, tangible personal property must of necessity become a constituent part of such final product in the series of continuous operations and treatment leading to this result." Bedford v. C.F. and L., 102 Colo. 538, 81 P.2d 752 (1938); reaffirmed, Western Electric v. Weed, Jr., 185 Colo. 340, 524 P.2d 1369 (1974).

Examples of manufacturing aids include but are not limited to the following:

- (1) Sales of carbon dioxide; gas for use in the sale of draft beer shall be taxable to the vendor of the beer since the vendor buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas.

If the gas is purchased for the sole purpose of incorporating it into a product to be sold and is so incorporated into a product to be sold as in soda water or other beverages, then the sale of the gas is exempt as a sale for resale.

- (2) Phosphoric and sulphuric acid used in a process known as anodizing aluminum are primarily used as electrolytes, acting as a catalyst, and do not become a component part of the aluminum objects that are processed. Accordingly, the processor is the consumer of such acids which are taxable to the processor at the time of purchase of such items.
- (3) Flux, if used as a cleaning agent or as means of reducing oxidation, is taxable to the manufacturer at the time of purchase. It may also be used for transmitting desirable alloys to the deposited metal. To the extent that it is used for the latter purpose, it is not subject to sales tax to the manufacturer at the time of purchase. Since the different functions are not mutually exclusive, exempt and nonexempt purposes may be served simultaneously, and in such cases the tax shall have to be apportioned between the various users.
- (4) Sulphur used in drying and curing fruit is regarded as used by the manufacturer, not as incorporated and resold, and the tax is to be paid by the manufacturer when he purchases the sulphur.
- (5) Forged steel balls are used in a ball mill to grind silica sand to a desired fineness. In the course of the grinding, the balls wear out, and they become incorporated into the finished product which is sold. The steel balls are purchased for the purpose of using them in the manufacturing processes and not primarily for the purpose of incorporating steel into a

finished product. Accordingly, the manufacturer must pay sales tax on the steel balls at the time of purchase.

- (6) If ice is in fact used for the sole purpose of becoming an ingredient of the finished product, as where it is used solely to supply all or a part of the water content of the sausage and luncheon meats, then the sale of the ice may be regarded as a sale for resale, and the processor is not required to pay tax at the time of purchase of the ice.

If the ice or dry ice is used for any purpose other than to become an ingredient or component part of the finished product, then it is purchased for a purpose other than for resale and is subject to tax to be paid at the time of purchase by the processor.

- (7) A rubber chemical used as a lubricant to facilitate mold release of rubber products, such as tires, and which may remain as a film on the finished rubber product is a manufacturing aid used as a lubricant by the manufacturer who is required to pay the sales tax at the time of purchase.
- (8) Cleaners purchased for use in preparing metal part surfaces prior to rust proofing do not become incorporated in the product, and, therefore, the manufacturer is the user and must pay sales tax at the time of purchase.
- (9) When paint thinner, abrasives, cleaning compounds, masking tape and similar items are used by a person in painting tangible personal property, that person is the user of such items and must pay sales tax at the time of purchase.
- (10) Talc used as an anti-adhesive or lubricant in the manufacture of rubber products is a manufacturing aid, and sales tax is imposed on the manufacturer at the time of purchase.

**Regulation 3.01.180(21) Electricity, coal, gas, fuel, coke or nuclear fuel used for mining**

Section 3.01.180(21) exempts the sales of electricity, coal, gas, fuel oil, coke, or nuclear fuel when used for any of the following purposes: mining (including oil and gas exploration and production), refining, irrigation, construction, telecommunication services, and street and railroad transportation services.

The use of electricity, coal, gas, fuel oil, coke or nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services as set forth in Section 3.01.120(4)(a) is subject to sales tax.

Vendors must collect the tax on all sales of equipment and materials to publishers of newspapers and commercial printers, except on sales of newsprint and printer's ink, which are expressly exempt as wholesale sales.

"Newsprint" is defined as cheap, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

**Regulation 3.01.180(22) Reserved**

**Regulation 3.01.180(23) Livestock & Poultry**

"Livestock" means domestic animals as found on a farm or ranch such as cattle, sheep, swine, goats, mares and stallions. "Livestock" does not include animals kept as pets for pleasure and recreation. Sales of feed for horses are exempt.

"Poultry" means domesticated birds kept for eggs or meat.

**Regulation 3.01.180(24)(a) Vending sales tax of greater or less than (.30)**

When the selling price of the item is more than thirty cents (\$.30), tax applies to the selling price, not just the amount in excess of thirty cents (\$.30).

A vendor making vending machine sales of individual items of merchandise at a selling price of thirty cents (\$.30) or less and also making vending machine sales at a price of more than thirty cents (\$.30) must be licensed and may purchase tax-free all items so vended. He must include the sales price of all vended items in the gross sales on his sales tax return but may deduct the tax-free sales of thirty cents (\$.30) or less to determine taxable sales.

**Regulation 3.01.180(24)(b)      Reserved**

**Regulation 3.01.180(25)      Livestock & Poultry**

The terms livestock and poultry are restricted to the definitions given in Regulation 3.01.180(23).

**Regulation 3.01.180(26)      Factory built home, Modular or Sectional**

"Price" or "Purchase price" means the price to the final user/consumer as defined in Section 3.01.020(27).

Factory-built housing includes, but is not limited to, modular homes or sectional homes, as defined in the Special Regulations entitled "Modular or Sectional Homes." Factory-built housing includes mobile homes as defined in Section 42-1-102(82)(b) of the Colorado Revised Statutes, which are used primarily for residential occupancy. See the Special Regulations entitled "Manufacturers and Prefabricators Acting as Contractors."

**Regulation 3.01.180(27)      Reserved**

**Regulation 3.01.180(28)      Reserved**

**Regulation 3.01.180(29)      Reserved**

**Regulation 3.01.180(30)      Sale of equipment to publisher & Newspapers**

Vendors must collect tax on all sales of equipment and materials to publishers of newspapers and commercial printers, except on sales of newsprint and printer's ink, which are expressly exempt from sales tax.

"Newsprint" is defined as cheap, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

<b>Regulation 3.01.180(31)</b>	<b>Reserved</b>
<b>Regulation 3.01.180(32)</b>	<b>Reserved</b>
<b>Regulation 3.01.180(33)</b>	<b>Reserved</b>
<b>Regulation 3.01.190</b>	<b>Reserved</b>
<b>Regulation 3.01.200</b>	<b>Reserved</b>
<b>Regulation 3.01.210</b>	<b>Use tax</b>

The primary purpose of the use tax is to impose a tax upon the privilege of storing, using, or consuming any tangible personal property purchased at retail. The use tax is complementary to the sales tax in those situations where a sales tax cannot, as a practical matter, be collected, or has not, for any reason, been collected in the course of the retail transaction. A sale by a licensed or unlicensed vendor to a user or consumer and not for resale is a retail sale.

The obligation for the payment of the tax is upon the user whether the tax is a sales tax or a use tax.

The sales tax and the use tax complement each other and together provide a uniform tax upon the sales, storage, use or consumption of all tangible personal property and taxable services purchased at retail. The amount of the tax is measured by the purchase price of the property or service.

Where tangible personal property is traded or exchanged between unlicensed persons, the sales or use tax is based on the fair market value of each article. Each person owes the tax on the fair market value of the tangible personal property that he received in exchange except for exchanges governed by Section 3.01.180(17).

The use to which property is put, in order to bring about imposition of the use tax, is not necessarily the actual and ultimate use, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the use tax when the article purchased is actually used or made available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which dominion or control over the property is assumed by the purchaser.

"Consumption" means the act or process of consuming and includes waste, destruction, or using up.

The use tax imposed pursuant to Section 3.01.210 shall be imposed as set forth in Regulation 3.01.140(2).

**Regulation 3.01.220(1)(a) and (b)      Use tax reporting**

All purchases subject to use tax must be reported in detail on the sales tax form supplied by the Finance Director. If the Taxpayer has any use tax liability that he has not reported on a sales tax form, then the statute of limitations shall not run on any such deficiency.

**Regulation 3.01.220(2)              Use tax for retailers not maintaining a location in the City**

Any retailer who is engaged in selling at retail, and who does not maintain a location in the City, as specified in subsection 3.01.020(17), shall impose, collect and remit to the Finance Director a use tax on such sales instead of collecting the sales tax imposed pursuant to Section 3.01.120. Such retailer, upon application, shall be issued a use tax license which is issued without charge. If the only activities of a retailer who does not maintain a location in the City are through the United States mail or common carrier, then such retailer shall not be required to comply with Section 3.01.220(2). (See National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois, 386 U.S. 753 (1967). If there are any other contacts, then such retailer would be required to have a license and to collect the retailer's use tax. (See National Geographic Society v. California Board of Equalization, 430 U.S. 551 (1977)).

Every retailer who is doing business in this City and who does not maintain a location in the City is required to collect the retailer's use tax from the purchaser regardless of whether title to the goods passes within or without the City, if the sale of tangible personal property is subject to taxation due to the storage, use or consumption of that property within the City.

All sales subject to the retailer's use tax must be reported on the forms supplied by the Finance Director.

Any retailer collecting sales or use tax thereby becomes a trustee for any such tax collected and is responsible as an agent of the City.

**Regulation 3.01.220(3)(a)      Reserved**

**Regulation 3.01.220(3)(b)      Reserved**

**Regulation 3.01.220(4)(a)      Reserved**

**Regulation 3.01.220(4)(b)      improvements to realty – parking lots, sidewalks & lighting**

Improvements to realty include parking lots, sidewalks, landscaping and lighting systems.

**Regulation 3.01.220(4)(c)      Reserved**

(Refer to Regulation 3.01.220(4)(b).)

**Regulation 3.01.220(5)              Reserved**

**Regulation 3.01.230(1)            Imposition of a use tax**

Section 3.01.230 is intended to prevent the imposition of a use tax on tangible personal property where the consumer actually paid sales tax to a licensed vendor located within the City or use tax to a licensed vendor located outside the City.

**Regulation 3.01.230(2)            Use tax as a complement to sales tax**

Use tax is a complement to sales tax. Since sales tax is imposed only on retail sales, which are defined by Regulation 3.01.020(29) as sales to the user of consumer of property or services sold, use tax shall not apply to the storage, use or consumption of tangible personal property purchased by a licensed retailer for resale within the regular course of a business.

Tangible personal property that was purchased tax-free for resale or as an ingredient of a manufactured or compounded product and subsequently withdrawn from stock for the purchaser's own use or consumption shall be taxed at the acquisition cost of all materials. The tax liability attaches at the time that the tangible personal property is withdrawn from stock. The tax must be reported on the return forms furnished by the Finance Department.

Chapter 3.01 exempts a sale of tangible personal property which becomes an ingredient or component part of the product.

To be exempt from the operation of the sales tax and use tax, tangible personal property purchases by a manufacturer, which property enters into the processing of the manufactured article, must become a constituent part thereof, wholly or partially, either by chemical or mechanical means. (See

Regulation 3.01.180(20).) (See also Western Electric v. Weed, Jr., 185 Colo. 340, 524 P.2d 1369 (1974) and Bedford v. Colorado Fuel and Iron Corp., 102 Colo. 538, 81 P.2d 752 (1938).)

**Regulation 3.01.230(3)            Reserved**

**Regulation 3.01.230(4)            Nonresidents acquiring residency in the City**

(See Regulation 3.01.230(11) as to nonresidents acquiring residency in the City.)

**Regulation 3.01.230(5)            Reserved**

(Refer to Regulations 3.01.180(1) and 3.01.180(2).)

**Regulation 3.01.230(6)            Reserved**

Refer to Regulation 3.01.180(20).)

**Regulation 3.01.230(7)            Reserved**

(Refer to Regulation 3.01.180(21).)

**Regulation 3.01.230(8)            Reserved**

**Regulation 3.01.230(9)            Reserved**

(Refer to Regulation 3.01.180(30).)

**Regulation 3.01.230(10)          Reserved**

**Regulation 3.01.230(11)          Property brought into the city by a nonresident**

Section 3.01.230(11) provides an exemption as to property brought into the City by a nonresident for his own use if he becomes a resident. This exemption does not extend to a nonresident engaged in business within the City who purchases tangible personal property for use or consumption in his business.

**Regulation 3.01.230(12)          Reserved**

**Regulation 3.01.230(13)          Reserved**

**Regulation 3.01.230(14)          Reserved**

**Regulation 3.01.230(15)          Reserved**

**Regulation 3.01.230(16)          Reserved**

**Regulation 3.01.230(17)          Reserved**

**Regulation 3.01.230(18)          Reserved**

**Regulation 3.01.230(19)          Reserved**

**Regulation 3.01.230(20)          Reserved**

**Regulation 3.01.230(21)          Reserved**

Charitable organizations are defined in Section 3.01.020(5).

**Regulation 3.01.230(22)          Reserved**

**Regulation 3.01.230(23)          Reserved**

**Regulation 3.01.230(24)          Reserved**

**Regulation 3.01.230(25)          Reserved**

**Regulation 3.01.240(1)            Reserved**

**Regulation 3.01.240(2)            Reserved**

<b>Regulation 3.01.240(3)</b>	<b>Reserved</b>
<b>Regulation 3.01.240(4)</b>	<b>Reserved</b>
<b>Regulation 3.01.240(5)</b>	<b>Reserved</b>
<b>Regulation 3.01.240(6)</b>	<b>Reserved</b>
<b>Regulation 3.01.250(1)</b>	<b>Reserved</b>
<b>Regulation 3.01.250(2)</b>	<b>Reserved</b>
<b>Regulation 3.01.250(3)</b>	<b>Refund Request</b>

- (1) Claims for refund shall be executed and filed with the Finance Department on forms furnished by the Finance Department in accordance with instructions accompanying such forms or appearing thereon.
- (2) The refund claims shall be signed by the claimant or his authorized officer or employee.
- (3) The claim shall be supported by an affidavit of the contractor or subcontractor that the sales or use tax sought to be refunded has been paid and that the tangible personal property so taxed has been "built in" to the structures owned and used by the tax-exempt entity, and shall indicate therein where the books and records and other substantiating evidence of payment of said tax are located, and where they may be examined by authorized representatives of the Finance Department.
- (4) The claim shall also be accompanied by a certificate of the architect, superintendent of construction, or other person who shall have personal, technical, and official knowledge that the property on which the tax has been paid and in fact been "built in" by the contractor in accordance with the specifications of the contract and in the amount required thereby.
- (5) Refunds shall be made only on taxes paid by the contractor or the subcontractor if such contractor or subcontractor applies to the Finance Director for a refund within sixty (60) days directly following the final inspection of the job site or the issuance of the certificate of occupancy.
- (6) In order to properly verify the contents of a claim for refund, the Finance Department may require such other and additional information as may be deemed necessary before payment of the claim shall be authorized.

- Regulation 3.01.250(4)**                      **Reserved**
- Regulation 3.01.250(5)**                      **Tax credit(s) applied to future returns**

If any vendor makes overpayment of the tax or is entitled to a credit on his tax payments because of mistakes, errors or canceled sales, in lieu of filing a claim for refund, credit for the amount of overpayment may be taken by the vendor on a subsequent return, but if the vendor is no longer engaged in business, then he should apply for a refund.

- Regulation 3.01.250(6)**                      **Reserved**

- Regulation 3.01.260(1)**                      **Trusteeship of funds**

The use of recognized accounting procedures to segregate and account for the funds shall be considered proper trusteeship of the funds. No statute of limitations applies to funds of the City in the possession of the retailer, and such moneys are collectible at any time after their due date upon demand of the Finance Director.

- Regulation 3.01.260(2)(a)**                      **Reserved**
- Regulation 3.01.260(2)(b)**                      **Reserved**
- Regulation 3.01.260(2)(c)**                      **Reserved**
- Regulation 3.01.260(3)(a)**                      **Reserved**
- Regulation 3.01.260(3)(b)**                      **Reserved**
- Regulation 3.01.260(4)**                      **Reserved**
- Regulation 3.01.260(5)*                      *Reserved*
- Regulation 3.01.260(6)(a)**                      **Reserved**
- Regulation 3.01.260(6)(b)**                      **Reserved**
- Regulation 3.01.260(7)**                      **Reserved**
- Regulation 3.01.260(8)**                      **Reserved**

**Regulation 3.01.260(9)**

**Reserved**

**Regulation 3.01.260(10)**

**Claims for recovery (tax remitted to incorrect cities)**

**Claims for Recovery.** The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes to the City.

- (1) As used herein, "Claim for Recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (2) When it is determined by the Director of Finance of the City of Lakewood that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.
- (3) The City may make a written Claim for Recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a Claim for a Recovery lies in the sole discretion of the City. Any Claim for Recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the Claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a Claim for Recovery may, for good cause, request an extension of time to investigate the Claim, and approval of such extension by the City shall not be unreasonably withheld.
- (4) Within ninety (90) days after receipt of a Claim for Recovery, the city receiving such claim shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the City of Lakewood in writing that the Claim is either approved or denied in whole or in part, including the reasons for the decision. If the Claim is approved in whole or in part, the City shall remit the undisputed amount to the City of Lakewood within thirty (30) days of approval. If a Claim is submitted jointly by the City of Lakewood and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a Claim for Recovery may only be made for good cause.

- (5) A city may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer.
- (6) The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery.

**Regulation 3.01.260(11)      Reserved**

**Regulation 3.01.270(1)(a)      Reserved**

**Regulation 3.01.270(1)(b)      Reserved**

**Regulation 3.01.270(1)(c)      Reserved**

**Regulation 3.01.270(1)(d)      Sales of business by owner**

If any vendor sells his business, then he shall make a return and pay all taxes due within ten (10) days of such sale. The purchaser of the business is liable for any unpaid tax due on sales made by his predecessor, including tax on outstanding accounts on which sales tax has not been remitted. The purchaser is required to withhold a sufficient amount of the purchase money to cover any taxes due and unpaid until the vendor can provide proof that any such taxes have been paid.

Sales tax shall be remitted by the purchaser on the price paid for tangible personal property, other than inventory, acquired with the purchase of business and for use or consumption in the operation of the business. The tax shall be based on the price paid for such chattels as are recorded in the bill of sale or purchase agreement and which constitute part of the total transaction at the time of sale or transfer. Where the transfer of ownership is a "package deal" in a lump sum transaction, then the sales tax shall be based on the book value set up by the purchaser for income tax depreciation purposes or, if no such value is established, then the fair market value.

<b>Regulation 3.01.270(1)(e)</b>	<b>Reserved</b>
<b>Regulation 3.01.270(2)</b>	<b>Reserved</b>
<b>Regulation 3.01.280</b>	<b>Reserved</b>
<b>Regulation 3.01.290</b>	<b>Reserved</b>
<b>Regulation 3.01.300(1)</b>	<b>Reserved</b>
<b>Regulation 3.01.300(2)</b>	<b>Reserved</b>
<b>Regulation 3.01.300(3)</b>	<b>Reserved</b>
<b>Regulation 3.01.300(4)</b>	<b>Reserved</b>
<b>Regulation 3.01.310</b>	<b>Reserved</b>
<b>Regulation 3.01.320</b>	<b>Reserved</b>
<b>Regulation 3.01.330(1)</b>	<b>Reserved</b>
<b>Regulation 3.01.330(2)</b>	<b>Reserved</b>
<b>Regulation 3.01.340</b>	<b>Reserved</b>
<b>Regulation 3.01.350</b>	<b>Reserved</b>

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## SALES AND USE TAX SPECIAL REGULATIONS

**THESE SPECIAL REGULATIONS ARE PROMULGATED FOR SPECIFIC BUSINESSES AND SPECIAL CIRCUMSTANCES. THEY SHALL APPLY IN ADDITION TO AND HAVE THE SAME EFFECT AS THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS. UNLESS OTHERWISE NOTED, ALL REFERENCES HEREIN TO CHAPTER 3.01 OR ANY SECTION OR SUBSECTION SHALL REFER TO CHAPTER 3.01 OF THE CITY OF LAKEWOOD MUNICIPAL CODE, AND ALL REFERENCES HEREIN TO RULES OR REGULATIONS SHALL REFER TO THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS.**

### TABLE OF CONTENTS

	<u>PAGE</u>
Advertising Agencies.....	62
Agricultural Producers.....	62
Automobile Dealers and Demonstration Vehicles.....	63
Automotive Repairs.....	64
Broadcasting Stations and Other Media.....	64
Cemeteries.....	64
Coins and Bullion.....	65
Consigned Merchandise Sales.....	65
Containers.....	65
Contractors.....	66
Coupons.....	67
Dental Laboratories and Dentists.....	68
Eating and Drinking Establishments.....	68
Fabricating, Producing, and Processing.....	69
Federal Areas, Sales on.....	70
Fiduciaries.....	70
Financial Institutions.....	71
Freight, Delivery and Transportation.....	71
Gas and Electric Services.....	72
Gift Certificates.....	72
Gifts, Premiums and Prizes.....	73
Hotels and Motels.....	73
Ice.....	73

Initial Use of Property.....	74
Insurance Companies.....	74
Janitorial Services.....	74
Leased Departments.....	75
Linen Services.....	75
Maintenance and Decorating Services.....	75
Manufacturers and Prefabricators Acting as Contractors.....	76
Modular or Sectional Homes.....	76
Morticians.....	77
Newspapers, Magazines and Other Publications.....	77
Optical Sales and Services.....	78
Photographers and Photofinishers.....	79
Printers and Printing.....	79
Private Clubs.....	81
Ready-Mix Concrete.....	81
Repossessed Property.....	81
Sand and Gravel.....	82
Service Enterprises.....	83
Tools, Jigs, Dies, Patterns, Molds, and Similar Items.....	85
Upholsterers.....	85

## **ADVERTISING AGENCIES**

Advertising agencies primarily furnish a service for their customers and, in connection with furnishing such service, acquire items of tangible personal property which are used by the agencies to perform a service or which go to their customers in connection with the performance of the service.

1. If the advertising agency is primarily performing a service and does not sell tangible personal property, it does not need a sales tax license. Purchasers of articles delivered in the City are subject to sales tax imposed by a City vendor.
2. If an agency acquires articles for resale to its clients, then the agency must have a sales tax license to purchase such property tax-free for resale. The sales tax charged by the agency would apply to the total amount of the retail sale of property prepared by its employees or acquired from outside sources. Sales by an advertising agency or direct mail advertising pieces, handouts, throwaways, and similar articles are subject to sales tax if delivered to customers in the City.
3. An agency could operate under both (1) and (2) of the Regulation. If so, records must be maintained to account for retail sales to customers.

## **AGRICULTURAL PRODUCERS**

"Agricultural producer" means a person regularly engaged in the business of using land for the production of crops or livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, feeders, dairymen, poultrymen, and other persons similarly engaged.

"Agricultural producer" does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for his own consumption.

Containers, labels and furnished shipping cases purchased by an agricultural producer to deliver his products to his customers are not subject to tax. (See Weed v. Occhiato, 175 Colo. 509, 588 P.2d 877 (1971)). "Containers" and "shipping case" include wire, twine, rope, tape and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products. Containers not used to deliver a product, or which are used for any purpose whatsoever prior to use in delivering a product to a customer, are subject to tax at the time of acquisition.

Fertilizer purchased by an agricultural producer is not subject to tax. "Fertilizer" includes compounds of nitrogen, phosphorus, potassium, trace elements or similar materials or substances which provide essential plant food elements and which become ingredients of the growing plant. "Fertilizer" does not include soil, sand, peat moss, limestone, disinfectants, mulches and similar materials primarily used to condition the soil or to preserve or facilitate plant growth, regardless of incidental nutritive value. Therefore, purchases of such materials are taxable. Similarly, the purchases of insecticides, fungicides, germicides, herbicides, and similar materials or substances are taxable.

### **AUTOMOBILE DEALERS AND DEMONSTRATION VEHICLES**

Motor vehicles used by automobile dealers for demonstration and other company purposes are subject to tax as follows:

- (1) A vehicle actually sold to a salesman, partner, or other official of the dealer's company is subject to the sales tax on the selling price, or if there is a trade-in allowance, on the net selling price of the vehicle.
- (2) A motor vehicle dealer who uses a vehicle for other than promotion of business, as defined in (3)(c) below, shall pay a use tax upon the dealer's net invoice price.
- (3) The dealer's use of an inventory or stock vehicle is not subject to a use tax if this vehicle is available for and in fact used for the promotion of business. As used in this rule, the following terms shall have the following meanings:
  - (a) "Available for use in the promotion of the business of selling vehicles by the dealership" means that the vehicle is on the dealership premises during a substantial portion of normal business hours.
  - (b) "In fact used" means that the vehicle not only must be available but actually must be used by the dealership in the promotion of its business.
  - (c) "Promotion of business" means any efforts to sell motor vehicles, but does not include vehicles used in the dealer's service or repair business.
- (4) To be entitled to the exemption provided in (3) above, a dealer shall file with his sales tax return a certification of the usage of all motor vehicles used in his business. Such certification shall be on a form prescribed by the City Manager.

## **AUTOMOTIVE REPAIRS**

Parts and accessories installed in motor vehicles are of the same nature as other sales of tangible personal property and, therefore, are taxable. The taxable amount is the total charge made to the customer, with deductions therefrom allowed for service or labor charges if separately stated.

If the repair of a motor vehicle is subcontracted to another repairman by the customer's repairman, the subrepairman shall charge sales tax to the customer's repairman on the retail price of the parts used in the repair job unless specifically instructed that the job is for resale, in which case the tax shall be billed to the customer by the customer's repairman. In either case, an itemized bill from the subrepairman must be available to the customer to show that tax was charged by either the subrepairman or the repairman.

Motor vehicle dealers, garages, repairmen, and the like may purchase tax-free only tangible personal property for resale. This exemption does not apply to service vehicles, machinery, equipment, supplies, tools, and similar items which they purchase for their own use or consumption and not for resale. Supplies consumed in the performance of a job (such as sandpaper and masking tape) are taxable to the repairman.

## **BROADCASTING STATIONS AND OTHER MEDIA**

Purchases of tangible personal property by broadcasting stations are subject to sales tax if title to the property is acquired by the stations, and the property is not to be resold in the regular course of business. Such purchases include equipment, materials, and supplies for transmitter (such as phonographic records and blank discs), relay, studio, business office and general station facilities.

Advertisements for a City vendor making retail sales of tangible personal property to City residents through a broadcasting station or by direct orders to the advertiser must state that sales tax must be added to the sales price remitted by City residents.

## **CEMETERIES**

Cemeteries must charge sales tax on the selling prices of cement vaults, liners, markers and similar items.

Persons furnishing foundations are deemed to be contractors and must follow the rules set forth herein under "Contractors."

## **COINS AND BULLION**

If any coin or currency is exchanged in the open market at the current exchange rate, then the transaction is not subject to sales tax. If coins, however, are commemorative or otherwise, and the coins, although legal tender in the issuing country and also acceptable as legal tender in other countries, are purchased at rates not reflecting actual currency value (as for numismatic or coin collecting purposes or where the previous metal content of the coins determine their value), then the transaction is the sale of tangible personal property and is subject to sales tax.

Sales of bullion are subject to sales tax. Bullion sold within the City and physically or constructively transferred into the City is subject to the sales tax. If the purchaser, however, paid a sales tax in the city or state in which he took delivery, then he is liable to the City for the difference between the sales tax paid and the City sales tax. Sales of gold and silver commodity contracts are not subject to sales tax unless delivery of the commodity is taken in the City.

## **CONSIGNED MERCHANDISE SALES**

Regardless of the status of the consigned inventory for the purpose of any other tax, and regardless of whether the retail customer knows that inventory is not owned by the vendor, the vendor is: (i) the retailer of the property; and (ii) liable for the tax due on the retail sales.

## **CONTAINERS**

Sales of containers, labels, tags, cartons, packing cases, wrapping paper, twine, bags, shipping cases, bottles, cans, similar articles and receptacles sold to manufacturers, producers, wholesalers, jobbers, retailers, or other licensed vendors for use as containers, labels, and shipping cases for articles sold by them are not taxable if such items are being resold even though no separate charge is made for them.

Deposits on returnable beverage bottle containers are not subject to sales or use tax.

## CONTRACTORS

- (1) "Contractors" mean any individual, partnership, firm, association, corporation, trust, estate or joint venture who performs work on real property for another party under the terms of an agreement. An individual working for a salary or wages is not considered a contractor.

"Contractor" includes building contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing and heating contractors, and also includes any other person engaged under a contractual arrangement in the construction, reconstruction, or repair of any building, bridge or structure and the realty related thereto. For purposes of this rule, "subcontractor" has the same meaning as "contractor."

- (2) All contractors, as defined in (1) above, who purchase tangible personal property in the City which is to be built by them into some building or structure or into or on the realty related thereto are regarded, for purposes of Chapter 3.01, as retail purchasers and must pay sales tax to the vendors; provided, however, that if: (i) a contractor purchases construction and building materials, as such term is used in Section 29-2-109 of the Colorado Revised Statutes; (ii) such materials are picked up by the contractor; and (iii) the contractor presents to the vendor a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid, then no sales tax is payable to the vendor. Sales tax is payable on all purchases of lumber, fixtures, equipment, materials, supplies, tools and similar items.
- (3) Some contractors, as defined in (1) above, may also be retail merchants of building supplies or construction materials which were purchased tax-free for resale. In the performance of their own construction contracts, they might remove from their own stock whatever is needed for their contract operations. Such use of tax-free merchandise is subject to sales or use tax based upon the greater of: (i) the acquisition cost of the merchandise; or (ii) the cost of the merchandise to the party for whom the building or structure is being constructed.

An over-the-counter sale of a complete unit not made to order with an agreement for installation of the unit is not a building contract. This rule includes sales of stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made cabinets, storm doors, storm windows, screens, sod and similar items. On such sales, the sales tax must be collected from the purchaser by the retailer-contractor. If the installation charges are segregated in the bid proposal or sales

invoices, these charges are not taxable. Repairs of such articles are not considered repairs to real property as contemplated under this rule.

- (2) Contractors are not required to file sales tax returns. They shall pay the sales tax to the persons in the City from whom they make purchases of tangible personal property.
- (3) No sales tax license shall be issued to regular contractors. They are not retailers of tangible personal property and are deemed to be the users or consumers of all articles used by them.
- (4) Any subcontractor purchasing materials for his job is the consumer of the materials and is liable for the payment of the sales tax on such purchases. No sales tax license shall be issued to subcontractors.

### **COUPONS**

Retailers accept coupons from their customers for a reduction in the regular selling price of an article. These coupons are classified as either manufacturer's coupons or store coupons.

A manufacturer's coupon is issued by the manufacturer of an article and allows the customer a reduction in the sales price of the product upon presentation of the coupon to the retailer. Because the retailer is reimbursed by the manufacturer for the amount of the reduction, sales tax applies to the full selling price before the deduction for the manufacturer's coupon.

A store coupon is issued by the retailer for a reduction in the price of an article when the coupon is presented to the retailer by the customer. Because there is no reimbursement to the retailer for such reduction, the sales tax applies to the reduced selling price of the article.

## **DENTAL LABORATORIES AND DENTISTS**

A purchase made by a dental laboratory, which becomes a constituent part of a prosthetic device to be resold to a dentist, is exempt from sales and use tax.

Purchases of supplies and materials that do not become constituent parts of a prosthetic device are subject to sales tax.

Sales of prosthetic devices to a dentist are exempt from sales or use tax.

Prosthetic devices are replacements for lost or missing natural parts or are the addition of devices through prosthetic dentistry to aid the dental bodily functions. Prosthetic dentistry consists of the use of inlays, crowns, replacement of lost teeth, bands, brackets, and other band attachments, wires, intraoral and/or extraoral traction devices, and retaining or holding appliances and other devices which aid in the dental bodily functions. Gold and silver used for fillings are also exempt.

General business equipment and supplies are taxable as are all hand instruments and other items used for patient care, and dental equipment and furnishings, and supplies used for patient diagnostic records.

Dental laboratories must obtain a sales tax license and must collect and remit sales tax on taxable sales.

The filing of monthly sales tax returns by dentists may present a hardship to them because of the nature of their operation and because equipment and supplies that are used in their businesses are purchased at irregular intervals throughout the year. Therefore, upon the approval of the Finance Director, dentists may file a sales tax return on other than a monthly basis, as determined by the Finance Director, covering all purchases of equipment and supplies upon which sales tax has not been paid.

## **EATING AND DRINKING ESTABLISHMENTS**

The sale of meals and beverages is subject to sales tax, and any person making such sales must acquire a sales tax license and collect sales tax based upon the total consideration paid thereon.

Caterers and other persons similarly engaged are liable for sales tax on the total selling price for items sold and/or charges for service essential to providing meals and beverages.

Private enterprises, such as commercial and manufacturing companies, and public agencies, such as governmental organizations, regularly serving and charging their employees or the public for meals and beverages are liable for sales tax based upon the selling price of such meals and beverages.

Fund-raising meals priced in excess of the regular selling price are subject to sales tax on the regular selling price.

The vendor of meals and drinks must pay the tax on purchases of most products used or consumed in the operation of his business, including fixtures, linens, silverware and glassware. (Carpenter v. Carmen Co., 111 Colo. 566, 114 P.2d 770 (1943).

Plastic and paper products such as tablecloths, towelettes, napkins, soda straws, plates, knives, forks, spoons, and cups are specifically exempt from sales tax. (Sections 3.01.180(15) and (16)).

When a customer purchases one dinner and receives another dinner free as a result of presenting a coupon for the free dinner, sales tax applies only to the actual amount charged.

Nontaxable gratuities include cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to sales check by the patrons for use of those providing the service), banquet tips and tips separately stated and added to the sales check by the vendor at a flat rate, and the amount is distributed by the vendor to persons who actually render the service.

## **FABRICATING, PRODUCING AND PROCESSING**

"Fabricating, producing, and processing" includes any operation which results in the creation or production of an article of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of such an article, excluding operations not so related for the creation or production of such an article.

An operation which changes the form or state of tangible personal property is one of fabrication. Persons regularly engaged in the fabrication or production of articles of sale at retail shall collect and remit the tax on the sales price. If the fabricator converts such property to his own use, then he shall remit the tax based on his acquisition cost.

The tax applies to the total charges for the fabrication or production of an article of tangible personal property made to order. For example, if a manufacturer orders a machine part from a machine shop, then the tax shall be paid on the total charge for the part, including labor, although charges for labor may be segregated from the cost of the materials. Similarly, the total charges for making drapes are subject to sales tax.

### **FEDERAL AREAS, SALES ON**

"No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any state, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the grounds that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a federal area; and such a state or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any federal area within such state to the same extent as with the same effect as though such area was not a federal area."

"The provisions of sections 105 and 106 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser." (See Title 4, U.S.C.A., Sections 105-110, 197 (Buck Act)).

### **FIDUCIARIES**

Trustees, receivers, executors, or administrators who, by virtue of their appointment by a state or federal court, operate, manage, or control a business engaged in buying and selling tangible personal property, including the liquidation of assets of a bankrupt, insolvent, or deceased person, must acquire a sales tax license in the fiduciary's name and otherwise meet the collection and reporting requirements of Chapter 3.01.

## **FINANCIAL INSTITUTIONS**

Banks, savings and loan associations, and similar financial organizations who offer gifts or premiums of tangible personal property as an inducement for opening an account, making a deposit or adding to an account are, for purposes of Chapter 3.01, making sales of tangible personal property (see (1) below) or are making taxable purchases (see (2) below).

These gifts and premiums are purchased by the financial institution and given to the customer or offered to the customer at a reduced price when a deposit is made to the customer's account. The purchase of these gifts and premiums or sales thereof are to be reported in the following manner:

- (1) The sales of these premiums and gifts at their reduced price are treated as retail sales, and the financial institutions must collect the sales tax from the depositor.
- (2) The difference between the bank's purchase price and the cash price paid by the depositor shall be taxable to the financial institutions. If an item is given to the depositor, then the item's purchase price (cost) shall be reported on the appropriate line of the sales tax return.

## **FREIGHT, DELIVERY AND TRANSPORTATION**

- (1) Where tangible personal property is sold "F.O.B. shipping point", and the purchaser at that point assumes the risks of ownership, and transportation costs do not appear on the seller's invoice, then the cost of transportation paid by the purchaser to the carrier is not subject to the sales tax.
- (2) Where tangible personal property is sold "F.O.B. shipping point", and the invoice allows a credit for transportation charges paid or to be paid by the purchaser, then the sales tax shall be computed on the total invoice charge.
- (3) Where tangible personal property is sold on a delivered or "F.O.B. destination" basis, the sales tax shall be computed on the total charges, even though the seller bills the purchaser separately for the freight charges.
- (4) Where the seller delivers the shipment and makes a charge which appears separately on the invoice, and in fact the seller assumes responsibility for loss and damage in transit, the sales tax shall be computed on the total invoice charge.

- (5) Where the seller has prepaid the transportation charges which appear on the seller's invoice as an additional charge or a separate invoice charge is made, the sales tax shall be computed on the total charges unless a satisfactory showing is made to the Finance Director that the seller was acting as a bona fide agent of the purchaser to effect transportation by the carrier of the purchased goods.

### **GAS AND ELECTRIC SERVICES**

Gas and electric services, whether furnished by municipal, public, or private corporations or enterprises, are subject to sales tax when furnished for domestic and commercial consumption, but are not taxable when sold for resale or for any of the uses set out in Section 3.01.180(21) or if subject to any of the general exemptions of Chapter 3.01.

The sales tax applies to all amounts paid for taxable gas or electrical services, irrespective of whether there is an actual consumption. The sales tax is imposed on all payments, whether in the form of a minimum charge, a flat rate, or otherwise.

Sales of electricity, coal, coke, gas, fuel oil, and nuclear fuel are exempt when sold for the following uses: construction, mining, refining, irrigation, telecommunication services and street and railroad transportation services.

The use of electricity, coal, gas, fuel oil, coke, and nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services is subject to sales tax. Persons performing services, such as restaurants, laundries, and dry cleaners, as well as stores, office buildings and other commercial users, are not industrial users and are required to pay the sales tax.

### **GIFT CERTIFICATES**

Sales of gift certificates and similar documents, as well as their redemption for cash, are not subject to tax. If the gift certificates or similar documents are redeemed for merchandise and not cash, then sales tax is due on the total selling price of the merchandise.

## **GIFTS, PREMIUMS, AND PRIZES**

Purchases of tangible personal property for use as gifts, premiums or prizes for which no valuable consideration is received from the recipient are subject to sales tax on the total purchase price. The purchaser is deemed to be the user consumer of such property. If the property is purchased from a licensed City vendor, then sales tax should be paid to the vendor upon such purchase.

Any person purchasing tangible personal property to give away in any manner is a user or consumer and is liable for the tax thereon. Such property includes advertising gifts and articles given as prizes, premiums, or for goodwill.

## **HOTELS AND MOTELS**

Such supplies as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, coffee and other items available for guests are not subject to sales or use tax at the time of purchase by the hotel or motel.

Linens, furniture, pool equipment and supplies, an similar items are subject to sales tax at the time of purchase by the hotel or motel.

If a hotel or motel operates a restaurant or lounge, see the rules set forth herein under "Eating and Drinking Establishments."

## **ICE**

Sales of ice to other sellers of ice or to sellers of soft drinks for use as a component part of a drink are for resale and are not subject to the sales tax.

Persons selling ice to manufacturers, carriers, or any other consumer for the purpose of cooling or keeping perishable items or property or for other uses are making taxable sales.

If ice is used for the sole purpose of becoming an ingredient or component of the finished product, as where it is used solely to supply all or a part of the water content of the sausage and luncheon meats, then the sale of the ice is a sale for resale. If not purchased for that sole purpose, and the purchase is not otherwise exempt, as for resale, then the purchase is subject to sales tax.

## **INITIAL USE OF PROPERTY**

Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase, even though the item shall be resold later in either its original or altered form. A tax-free purchase is taxable in full at the first time it is used by the purchaser for a nonexempt purpose.

(Example: A junkman may not buy a new car tax-free under the theory that the car is going to be junked someday and resold through his business for scrap.)

## **INSURANCE COMPANIES**

Insurance companies are not exempt from sales tax on purchases of tangible personal property for their consumption.

Purchases of articles by an insurance company to replace insured damaged property are subject to tax. Articles purchased by the insured with the proceeds of a damage claim settlement received from an insurance company are subject to tax.

## **JANITORIAL SERVICES**

Items such as hand soaps, paper towels, toilet tissue, and disinfectants which are furnished under service contract and which are billed to the customer as a separate and distinct item from the service that is performed are considered retail sales of tangible personal property. Sales tax shall be collected from the customer and remitted by the janitorial service.

If such consumable items are not separately stated but are included in the janitorial service contract, then the janitorial service shall be deemed to be the user or consumer of the products and shall pay sales tax at the time of purchase.

No sales or use tax is applicable to the charge for service rendered.

## **LEASED DEPARTMENTS**

Leased departments in department stores, for the purpose of licensing under the State chain store license law, are separate and distinct stores, just the same as if the various businesses conducted in such departments were conducted in separate and distinct buildings. The fact that the various departments are in one building or on one floor of a building does not alter the fact that ownership and control of merchandise is different in each leased department. Where a store has leased departments to persons for retail sales of tangible personal property, each leased department shall make separate monthly sales tax returns. The lessee shall keep his own books and make his own sales tax collections on retail sales. If the lessor store keeps the books for the lessee departments and makes collections for their sales, then the lessor store shall make separate sales tax returns for such departments and shall pay the taxes due thereon, but the lessee is not relieved of his ultimate liability under Chapter 3.01 if the lessor store fails to make the proper sales tax returns or to remit the taxes to the Finance Director.

## **LINEN SERVICES**

Sales or use tax is applicable to the entire amount paid or charged for linen services by a linen service company, including amounts paid or charged for services rendered and tangible personal property furnished in connection therewith.

## **MAINTENANCE AND DECORATING SERVICES**

Persons engaged in the business of rendering renovation services, such as painters and paper hangers, floor waxing services and others similarly engaged in repairing and servicing tangible personal property under a maintenance or service contract are rendering a service and are considered the users of the articles purchased and are subject to tax on such articles at the time that they are purchased.

No sales or use tax is applicable to the charges made for these services.

## **MANUFACTURERS AND PREFABRICATORS ACTING AS CONTRACTORS**

A manufacturer or prefabricator may contract to build into real property that which he manufactures or prefabricates. If the contract provides for the transfer of title to the materials prior to the time that the materials are built into the real property, and if the material price is separately stated from the installation price, then the manufacturer shall be considered to have sold the material. Therefore, sales tax must be charged only on the selling price of the material. If not properly segregated, then the amount included for installation is also part of the taxable price.

If a manufacturer or prefabricator builds materials into real property, and title to the materials does not pass until incorporated in the real property, then the manufacturer is a contractor contemplated in the Special Regulation for "Contractors" and must follow such Special Regulation.

## **MODULAR OR SECTIONAL HOMES**

A "modular or sectional home" is a factory-built structure that: (i) is built to a customer's specifications or inventory standards; (ii) is not titled; (iii) may be approved for HUD/FHA long-term financing; (iv) complies with conventional residential building codes; and (v) is separate from its delivery chassis.

A manufacturer or dealer who enters into a single contract with the customer is a construction contractor if the contract requires that manufacturer or dealer to sell and install the structure by incorporating it into the realty of the customer before title to the structure is passed. The manufacturer or dealer is considered to be the final consumer of the materials and supplies incorporated into the real estate under the contract. (See the Special Regulation for "Contractors" regarding the payment of sales tax.) A manufacturer or dealer who merely sells a modular or sectional home to a customer and does not at the time agree to incorporate it into the realty of the customer is considered a retailer and is required to charge sales tax on fifty-two percent (52%) of the sales price of the structure.

A modular and sectional home manufacturer or dealer may be both a contractor and a retailer. (See the Special Regulation for "Contractors" as it relates to retail-contractors.)

## **MORTICIANS**

Morticians are considered to be rendering services and making sales of tangible personal property and shall collect sales tax in accordance with the following rules:

- (1) If a funeral service is contracted for in such a manner that the charges for such articles as caskets, urns, vaults, shipping boxes, clothing, and similar articles, are separately stated from the charges for services as music, police escort, clergy honorarium, and similar services, then sales tax shall be imposed only upon the selling price of such articles.

The fact that the remains are consigned to a common carrier for delivery elsewhere, whether inside or outside the City, does not change the fact that such articles were first used in the City and, therefore, are subject to sales tax. These rules apply to all sales of funeral services and related tangible personal property within the City.

Articles that are purchased and that are not to be resold in the normal course of business are subject to sales tax at the time of purchase. Tax-free purchases for resale, when removed from inventory and used in the regular course of a mortician's business, must be included in the sales tax return for the month in which such articles are removed from inventory.

## **NEWSPAPERS, MAGAZINES, AND OTHER PUBLICATIONS**

The sale of newspapers, as defined in Section 3.01.020(25) of Chapter 3.01 of the City Code, is exempt from sales and use tax. Such definition would include the following:

"Every newspaper printed and published daily, or daily except Sundays and legal holidays, or on each of any five days in every week excepting legal holidays and including or excluding Sundays shall be considered and held to be a daily newspaper; every newspaper printed and published at regular intervals three times each week shall be considered and held to be a triweekly newspaper; every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semiweekly newspaper; and every newspaper printed and published at regular intervals once each week shall be considered and held to be a weekly newspaper. No publication, no matter how frequently published, shall be considered a legal publication unless it has been admitted to the United States mails as second-class matter."

This exemption on sale of newspapers may not be extended to include magazines, trade publications or journals, credit bulletins, advertising pamphlets, circulars, directories, maps, racing programs, reprints, newspaper updating or revision service, book or pocket editions of books or other newspapers not otherwise qualifying under the immediately preceding paragraph. A publisher who only makes sales of newspapers is not required to obtain a sales tax license. The publisher shall pay sales tax upon all purchases of tangible personal property except newsprint and printer's ink used in the production of the newspaper products. If the newspaper publisher makes retail sales of other articles delivered in the City, then he shall obtain a sales tax license and collect sales tax and may purchase such articles tax-free for resale.

Magazines, periodicals, trade journals, and similar items are tangible personal property whose retail sale is subject to sales tax.

If publications are printed and sold within the City, then the subscription price is subject to sales tax. If the publication is printed in the City and delivery is made outside the City, then the sale is not subject to sales tax.

Trade journals, advertising pamphlets, circulars, etc. which are to be distributed free of charge and are distributed by means of house-to-house delivery are not exempt from sales tax. Sales tax must be paid to the printer by the advertiser at the time that such items are prepared by the printer. If such items are purchased outside the City, and no sales tax has been paid thereon, then the advertiser must pay the City's use tax on such items.

Organizations which produce and distribute free trade publications, and similar items, are deemed to be purchasers for their consumption, and such items are subject to sales tax based on the purchase price of the tangible personal property consumed.

## **OPTICAL SALES**

Eyeglasses, lenses, frames, contact lenses, and similar articles, together with cases or similar containers used to transfer the property to the customer, when dispensed under a prescription or other written order of a legally qualified member of the healing arts are considered to be prosthetic devices and are exempt from sales and use tax.

Sunglasses, reading glasses, binoculars, telescopes, and similar articles not dispensed under a qualified prescription are subject to sales tax.

## **PHOTOGRAPHERS AND PHOTOFINISHERS**

Photographers and photofinishers are primarily engaged in the business of selling tangible personal property to their customers, and such sales are subject to sales tax. Purchases of materials which become ingredients or component parts of the finished picture, such as mounts, frames, and sensitized paper, are not subject to sales tax because such items are purchased by the photographer or photofinisher for resale. Conversely, purchases of materials that do not become a part of the product sold to the customer are taxable to the photographer or photofinisher. Mounted negatives sold by photographers and photofinishers are subject to sales tax on the total price charged on negative and mount. Only the sale of developed negatives, such as movie film, would be exempt from sales tax.

The charge made by photographers and photofinishers for only the development of film is a service charge and is not subject to sales tax. If individuals deliver their own pictures to photographers for tinting or coloring, then the transaction is a service and is not subject to sales tax. If prints made from developed negatives are sold to a customer, then tangible personal property has been sold, and the selling price is subject to sales tax.

A photographer may be performing a service subject to the Special Regulations relating to "Service Enterprises." If his service is specifically bargained for without regard to the tangible personal property involved, and if the value of the service is greater than the property transferred, then no sales or use tax is to be charged to the purchaser, but the photographer must pay sales tax on purchases of materials used to perform his service.

## **PRINTERS AND PRINTING**

Sales of catalogs, books, letterheads, bills, envelopes, folders, advertising circulars, and other printed matter are taxable retail sales if the purchaser does not resell the articles but consumes them as by distributing them free of charge. Except as herein stated, a printer may not deduct from the selling price any charge for labor or service in performing the printing, even though the labor or service charges may be billed separately from the charge for stock. The labor or service is expended in the production of the article sold. Consequently, it is manufacturing labor incorporated in the product.

If separately stated on the invoice, then the services of typesetting, color separation, and design, art and camera mechanicals performed by a printer or his subcontractor for a customer or another printer is not subject to sales or use tax.

On commercial printing of postal cards or stamped envelopes purchased from the United States Postal Service, the amount subject to tax does not include the amount of postage involved.

Printed matter which is partially printed, invoiced to the customer, held in stock for further imprinting, and finally invoiced for subsequent imprinting is subject to sales tax on the full price charged by the printer for the item. Sales tax must be collected on the selling price of each part of the job. The subsequent imprinting before delivery is deemed to be completion of the initial sale and not a separate transaction.

Exempt purchases of tangible personal property for resale include:

- (1) Paper: Newsprint, stock on which the finished product is printed and delivered to the customer, and wrapping materials for finished products sold to customers.
- (2) Ink: Printer's ink, ink additives, and overprint varnishes.
- (3) Chemicals: Anti-offset sprays, fountain etch solutions, gum solutions, and all component chemicals when used with the above materials.
- (4) Materials: Padding compound, stitching wire and staples, and bookbinder's tape.
- (5) Pre-press preparation materials: Light sensitive film, plates and proofing materials. Such exemption shall be allowed upon compliance with the procedures stated below.

Printers who are just performing a service shall be subject to the Special Regulations relating to "Service Enterprises." Printer's ink and newsprint are exempt under Section 3.01.180(30). Pre-press preparation materials (which shall be defined as light sensitive films, plates, and proofing materials) shall qualify as exempt purchases of tangible personal property to the extent that such items are utilized for the production of a specific product for a specific customer, and title passes to the customer as part of the total sale, and adequate cost records for the particular job showing amount of prepress preparation material are retained by the printer.

A printer may at times retain a customer's property in his place of business. When tangible personal property is retained in the printer's place of business, the department may examine the various records applicable to this property, such as who is liable for the payment of insurance and personal property tax on the property, who is allowed to deduct the depreciation expense on the property, and who benefits from salvage of the item in making a determination of the ownership of the property.

## **PRIVATE CLUBS**

Private clubs such as country clubs, athletic clubs, fraternal organizations, or organizations of persons formerly in the armed services of the United States are subject to tax when such clubs sell tangible personal property at retail or do anything else subject to tax as provided in Chapter 3.01. Such transactions are taxable even though transactions are with members of such clubs.

## **READY-MIX CONCRETE**

Ready-mix concrete is subject to sales tax on the delivered price, which includes minimum load and transportation charges. Standby charges charged after arrival at the destination are not subject to sales tax if segregated on the customer's invoice.

## **REPOSSESSED PROPERTY**

If the reposessor of tangible personal property sold the property to the person from whom it was taken and remitted the tax on the total selling price, then the retailer-reposessor may deduct the uncollected selling price from the gross sales on the sales tax return for the period during which the repossession occurred. Repossessed property must be held exclusively for resale by a person holding a valid license. The subsequent retail sale of the repossessed property is subject to sales tax.

No deduction or other credit may be taken from gross sales on account of the repossession where:

- (1) The repossessed property is a motor vehicle;
- (2) The retailer-reposessor reports sales tax on the cash basis; or
- (3) The retailer-reposessor reports sales tax on the accrual basis but elects under Section 3.01.020(22) to report on the cash basis the collections of such credit sales as that subject to repossession.

A person is not liable for sales or use tax on the transaction of repossessing tangible personal property for which he retained a security interest.

## **SAND AND GRAVEL**

Tax must be imposed on the delivered price of sand and gravel, including minimum load and transportation charges in accordance with the provisions of Regulation 3.01.020(27). Tax on charges for hauling materials to the customer's destination may be avoided only if all of the following conditions are met:

- (a) The retailer has fixed and posted prices both for the material and for hauling. These prices must be completely independent of each other. In other words, the price of the material must be the same to the customer whether the retailer provides the hauling or the customer arranges for his own transportation. If the retailer provides the hauling, the charges must be clearly segregated on the customer's invoice.
- (b) The customer must have the option to determine the means of transportation to his destination. There must be practical as well as economic alternatives available for the customer in terms of providers of transportation.
- (c) Regardless of who provides the transportation, the retailer and the customer must agree and acknowledge in writing that the sale of the materials takes place, and title to the goods transfers at the retailer's place of business. The customer must acknowledge that he is the owner of the material being transported.

Stand-by charges made after arrival at the destination are not subject to sales tax if segregated on the customer's invoice.

Sand and gravel removed from the ground become tangible personal property and are subject to the sales tax that applies to retail sales of tangible personal property. Sales of sand and gravel are subject to sales tax unless sold to a licensed vendor for resale.

The retailer of sand and gravel who removes sand and gravel stocks to fulfill his own construction obligations is subject to sales tax on the acquisition cost of the products consumed at the time of conversion to his own consumption.

## SERVICE ENTERPRISES

Persons engaged in the business of rendering service are consumers--not retailers--of the tangible personal property which they use incidentally in rendering the service. Therefore, sales tax applies to the sales of the property to them. If, in addition to rendering service, they regularly sell tangible personal property to consumers, they are retailers with respect to such sales, and they must obtain a license, file returns, and remit tax on such sales.

Example: A film company contracts to make a ski film for a firm owning a resort. The cost to the resort for the original film is \$25,000. Additional reels may be purchased for \$250 each. The \$25,000 charge for the first reel of film is not subject to tax as the film company is charging for their services in producing tangible personal property, the transfer of which is incidental to the performance of the service. The sale of additional reels at \$250 would, however, be subject to sales tax. The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true objects of the contract. In other words, if the real object sought by the buyer is the service per se, then the transaction is not subject to sales tax even though some tangible personal property is transferred. For example, a firm which performs business advisory, recordkeeping, payroll and tax services for small businesses and furnishes forms, binders, and other property to its clients, as an incident to the rendition of its services, is the consumer and not the retailer of such tangible personal property. The true object of the contract between the firm and its client is the performance of a service and not the furnishing of tangible personal property. Similarly, an idea may be expressed in the form of tangible personal property and that property may be transferred for a consideration from one person to another. The person transferring the property, however, may still be regarded as the consumer of the property. Thus, the transfer to a publisher of an original manuscript by the author thereof for the purpose of publication is not subject to taxation. The author is the consumer of the paper on which he has recorded the text of his creation. The tax would apply, however, to the sale of artistic expressions in the form of paintings and sculptures even though the work of art may express an original idea since the purchaser desires the tangible object itself since the true object of the contract is the work of art in its physical form.

When a transaction is regarded as a sale of tangible personal property, tax applies to the gross receipts from the furnishing thereof, without any deduction on account of the work, labor, skill, thought, time spent, or other expense of producing the property.

A research and development contract is distinguished from a contract for the manufacture of a customer-made item. In the latter, the research and design, although necessary to the manufacture of the item, is incidental to the primary purpose of the contract. Generally, custom-made items are for

consumption or resale. The buyer wants the item for its intrinsic value as an item and is not interested in the data developed in the course of its manufacture. In such contracts, the entire contract price is subject to tax if the tax applies. A person contracting for research and development is primarily contracting for information which is intangible. Generally, the person contracting for information is going to use it to manufacture and sell some item of tangible personal property.

The development of the information in a research and development contract is not a sale of tangible personal property. It is a service. Since the information, such as plans, design, and parts lists, cannot ordinarily be conveyed orally, the information is conveyed on paper. The transfer of the information on paper is not a sale of tangible personal property, and the transfer is incidental to the service of developing information. In certain instances, the information cannot be conveyed without the transfer of a prototype. In such cases, the transfer of the prototype is incidental to the transfer of the information and is not a sale of the prototype.

Contracts for research work which require only the development of ideas, plans, and engineering data do not constitute sales of tangible personal property although models and drawings are furnished to convey such ideas.

Thereafter, if an entirely separate contract is entered into for the production of the finished product, then tax applies to the gross receipts received for the sale of the drawings, visualizations, and similar items performed under a separate agreement. For example, the original construction plans contemplated that a fifty dollar (\$50) charge for original plans made according to the desires of each person interested in converting existing buses or van trucks into "house cars" would not be subject to tax. The total charge would be subject to tax if the plan sold was merely a duplicate of a plan drawn for a preceding customer. The planner is the consumer of the paper and other material used to present the plan.

## **TOOLS, JIGS, DIES, PATTERNS, MOLDS, AND SIMILAR ITEMS**

A person who makes and sells tools, jigs, dies, patterns, molds and similar items to a customer for use in his manufacturing or processing is making retail sales of the articles and is required to collect and remit the sales tax. After using such items, the purchaser may resell them to the customer for whom he is manufacturing articles. Such resales, however, do not exempt the sale first described above because that customer purchased the article primarily for use and not for resale. If an article is sold to a customer after use by the seller, then the sale is subject to sales tax.

## **UPHOLSTERERS**

An upholsterer who is engaged in the repair, recovering, upholstering or similar work on a customer's property is engaged in the sale of tangible personal property, and therefore, shall charge his customers sales tax on the tangible personal property used in this service. The upholsterer must separately state the tangible personal property and the service or labor charges on his billing to his customer.

A sale by the upholsterer of upholstery material, manufactured articles, or other tangible personal property to a retail customer, without service rendered in connection with the sale, is taxable on the full selling price of the property.

An upholsterer who purchases property which he upholsters and then offers such property for sale is required to charge sales tax on the full selling price of such property.

Upholstery material and other items of tangible personal property that become a part of the upholstered item may be purchased tax-free, but the upholsterer must pay sales tax on those items used or consumed that do not become a part of the completed upholstered property.