
Tax Compliance Guide

Wholesale Sales Topic 305

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Wholesale sales are exempt from Westminster sales/use tax. The *Westminster Municipal Code* defines “wholesale sales” to mean sales to licensed retailers, jobbers, dealers, or other wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to non-licensed retailers are not wholesale sales. The burden of proving that a transaction qualifies as a wholesale sale is on the seller (wholesaler).

License Required

In order to exempt purchases for resale, wholesalers must obtain a copy of the purchaser’s valid sales/use tax license or resale certificate. If the purchaser is located in Westminster, or the subsequent sale, lease, or rental will occur in Westminster, a valid Westminster license is required to exempt the sale. This includes transactions whereby the seller delivers property or services directly to the purchaser’s customer in Westminster, but bills the purchaser for the sale. Each invoice should include the complete name, address and resale number of the purchaser. Exemptions that are not adequately documented will be disallowed and the seller will be responsible for the resulting sales tax deficiency plus penalties and interest charges.

Items must be for Resale

Wholesalers should exercise care in determining whether the items being purchased will be resold by the purchaser. Items purchased for the purchaser’s own use are not exempt. In the case of raw materials or ingredients for manufacturing, the product being manufactured or processed must be transformed in fact by the addition of the property or materials, and such property or materials must become a constituent part of the finished product. Manufacturing tools and equipment are not exempt from Westminster sales/use tax.

Commercial packaging material, including labels and shipping cases, sold to a licensed business engaged in manufacturing, compounding, wholesaling, jobbing,

retailing, packaging, distributing, or bottling for sale, profit or use, is exempt provided that it is used by such business to contain or label a finished product, it will be transferred by said business along with and as part of the finished product to their purchaser, and it is not returnable to said business for reuse.

Similarly, disposable napkins, straws, to-go boxes, and eating utensils sold to a foodservice retailer are exempt provided that the property is used in the consumption of food purchased, the cost of the property is included in the price of an item which is sold separately, rather than included in the price of a service, and the property is not returnable or intended for reuse.

Disputed Tax

Should a dispute arise between a retailer and a purchaser as to whether a transaction or item is subject to tax, the retailer, in order to avoid potential loss resulting from improper exemption, is required to collect the tax in dispute from the purchaser. The purchaser may then submit a *Claim for Refund* form to the City within 60 days of the purchase. This form is available in the *Westminster Tax Forms* section located in the Business tab on the City website or by contacting the Sales Tax Division. If the Sales Tax Division determines the transaction was in fact exempt from tax, a refund will be issued directly to the purchaser.

Disallowed Exemptions

Although the tax is imposed upon the purchaser, sellers have the burden of showing clearly that sales were properly exempted. In the event of an audit, the seller may be required to prove that the purchaser was properly licensed and the items purchased were resold. The seller, therefore, assumes some risk in exempting sales that the City later determines are not exempt, as the City will assess taxes, penalties and interest against the seller despite any indemnification by the purchaser.

Examples

1. Company A is a licensed Westminster wholesaler selling auto parts & supplies. Company B purchases a battery for one of their delivery vehicles and presents Company A with a Westminster resale license. Because the battery is not for resale, but for Company B's use, Company A must collect Westminster sales tax on the purchase price of the battery.
2. Company C is a national leasing company leasing various furniture and equipment. Company C leases manufacturing equipment to Customer X. Company C purchases the equipment it intends to lease from Company D, a licensed Westminster dealer who drop ships the equipment directly to Customer X. Company C does not have a valid Westminster sales/use tax license. Company D must collect Westminster sales tax from Company C on the purchase price paid for the equipment even though Company C intends to lease it because Company C does not have a valid resale license.

Note that payment of Westminster sales tax on the purchase for lease does not relieve Company C of its burden to collect Westminster sales tax on the lease payments. Company C must obtain a Westminster sales/use tax license and collect and remit this tax on periodic Westminster sales/use tax returns. Upon licensing, Company C may apply for a refund of the Westminster sales tax paid to the equipment dealer.

3. Company E manufactures aluminum construction products such as gutters and siding. As part of the manufacturing process, the aluminum is pre-treated in a chemical bath prior to painting which helps the paint adhere to the metal. Although some of the chemical remains on the metal and mixes with the paint, the majority evaporates off prior to painting. Because the pre-treatment chemical does not become a component part of the finished product, Company E must pay Westminster sales or use tax when purchasing the chemical.
4. Customer Y issues a purchase order to Company F, a licensed Westminster retailer, for a quantity of 2 parts. Customer Y supplies Company F with its Westminster sales/use tax license number. The purchase order states that Customer Y agrees to pay applicable use tax on any parts it ultimately uses. Company F is unsure if Customer Y will resell the parts given the nature of Customer Y's business and the small quantity ordered. Company F should collect Westminster sales tax and direct Customer Y to seek a refund from the City within 60 days of the purchase. In doing so, Company F avoids the risk of being assessed the tax, plus penalty and interest, if the exemption is disallowed.

Related Topics

Disputed Tax & Burden of Proof
 Manufacturing & Fabrication
 Restaurants & Bars
 Samples, Demonstrations, and Displays

Citations

Westminster Municipal Code

§ 4-1-2. Exemption; Burden of Proof

§ 4-1-5. Retailer Responsible for Collection and Payment of Tax

§ 4-2-2. Definitions

§ 4-2-6. Exemptions from Sales Tax

THIS GUIDANCE IS A SUMMARY IN LAYMEN'S TERMS OF THE RELEVANT WESTMINSTER TAX LAW FOR THIS TOPIC, INDUSTRY, OR BUSINESS SEGMENT. IT IS PROVIDED FOR THE CONVENIENCE OF TAXPAYERS AND IS NOT BINDING UPON THE CITY. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE WESTMINSTER MUNICIPAL CODE AND APPLICABLE RULES AND REGULATIONS. THIS GUIDE DOES NOT CONSTITUTE A CITY TAX POLICY.

Contact Us

For additional assistance, please contact us:

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Administrative offices are open Monday through Thursday from 7:00a.m. to 6:00p.m. (closed Friday).

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 From the Business menu, choose Westminster Taxes