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## Tax Compliance Guide

### Construction – Equipment Topic 321

(03/2020)

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The *Westminster Municipal Code* defines construction equipment as any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure. Such equipment is subject to Westminster use tax on the full purchase price to the extent a sufficient, legally-imposed sales/use tax has not been paid to the City or another municipality. Use tax applies to the full purchase price regardless of age or value at the time of first use in the City. The definition indicates the prevailing intended use of the equipment. The actual use of this equipment for purposes other than that stated above shall not disqualify it from reporting requirements nor change its treatment as taxable construction equipment.

Contractors must file a *Construction Equipment Declaration* form with the Sales Tax Division and pay any use tax due *prior* to locating equipment in the City. 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. An amended declaration must be filed every 90 days or, for projects less than 90 days in duration, no later than 10 days after substantial completion of the project. More frequent declaration is required if all construction equipment is not declared on the first *Construction Equipment Declaration* form, as equipment must be declared *prior* to being located in the City.

The *Westminster Municipal Code* provides a use tax exemption for construction equipment for which the purchase price was less than \$2,500. Contractors need not declare this equipment, as it is presumed that a sufficient sales/use tax was paid at the time of the purchase. Furthermore, automotive vehicles (a vehicle or device by which is designed primarily to transport persons or property upon public highways) should not be declared. This includes contractor's pick-up trucks, dump trucks, water trucks, and other similar vehicles. Equipment that is attached to vehicles or trailers, such as cranes or excavators, must be declared.

Provided that a declaration is properly filed with the Sales Tax Division *prior* to locating equipment in the City, use tax may be pro-rated for equipment that will be located in the City for 30 consecutive days or less. The tax due will be computed by multiplying the full purchase price by one-twelfth (1/12<sup>th</sup>).

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### Rented or Leased Equipment

Although rental houses are engaged in business in the City and are required to be licensed, some fail to collect sales tax on rental or lease payments for equipment in Westminster. In these cases, the contractor is required to remit such sales tax directly to the City. The taxable purchase price includes, without limitation, the rental or lease charges as well as operator charges that are not separately stated, charges for delivery/pickup of the equipment, environmental fees, property tax charges, insurance charges, and fuel surcharges. If the equipment is picked up outside the City, the first rental or lease period (up to 30 days) is not subject to Westminster sales tax. Subsequent periods will be subject to Westminster sales tax.

In determining whether a transaction is a lease of equipment with the furnishing of an operator by the lessor, or a subcontract for services, the City will examine the terms of the transaction as outlined in the invoice, contract, or other document detailing the agreement between the seller and the purchaser. Terms indicating that the transaction is a taxable lease or rental include, but are not limited to, the following:

- ❖ Use of terms such as “lease”, “lease agreement”, “rental agreement”, “lessor” or “lessee”.
- ❖ Billing based upon usage such as machine hours, days, or other periods of time.
- ❖ Charges for operators or equipment insurance.
- ❖ Collection of state or local sales taxes.
- ❖ Indemnification of the lessor and/or risk of loss by the lessee.
- ❖ Lessee jurisdiction over operators or other employees furnished by the lessor.

- ❖ Limitations on warranties of work performed by lessor's employees.

Equipment under capital lease is subject to tax on the full purchase price upon first use in the city, including the sum of all lease payments paid or promised to be paid under the terms of the lease.

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## Examples

1. On August 1<sup>st</sup>, XYZ Construction, a construction contractor with a yard in unincorporated Adams County, is scheduled to begin work on a construction project in the City. Prior to that date, XYZ files a *Construction Equipment Declaration* form stating that a grader and a loader will be used on-site for approximately 4 months. Neither piece of equipment has been used in the City before nor has any sales or use tax been previously paid to another municipality. XYZ must pay use tax on the full purchase price upon filing the declaration.
2. On November 1<sup>st</sup>, XYZ prepares an amended *Construction Equipment Declaration* form (for the project described in example 1). Noting that the grader was only in the City until August 20<sup>th</sup>, XYZ realizes that the equipment is eligible for pro-ration. XYZ computes the use tax due on 1/12<sup>th</sup> of the purchase price and files a *Claim for Refund* form for the overpayment.
3. On November 15<sup>th</sup>, an XYZ project manager needs to bring an excavator to the Westminster job site from the yard. The project manager will only need the excavator for a couple of days. Although XYZ has already filed a *Construction Equipment Declaration* form for other equipment, XYZ will need to declare the excavator on a new declaration on or before November 15<sup>th</sup> in order to be eligible for the 1/12<sup>th</sup> pro-ration.
4. In order to pour the foundation of the building, XYZ hires a concrete pump from DEF Concrete Pumping. The terms of the agreement with DEF state that the agreement is a lease. DEF charges XYZ a \$50 yardage charge (\$2/yard), \$800 hourly charge (\$100/hour), \$50 delivery charge, \$160 operator charge (\$20/hour), and a \$5 environmental fee. DEF does not collect Westminster sales tax. XYZ must pay sales tax to the City on the yardage charge, the hourly charge, the delivery charge, and the environmental fee (\$905 taxable total). XYZ does not owe sales tax on the \$160 operator charge because this charge was separately stated on the DEF invoice.

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## Related Topics

Construction (Various)  
 Leased & Rented Property  
 Previously Paid Sales/Use Taxes

Special Fuels

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## Citations

*Westminster Municipal Code*

§ 4-2-2. Definitions

§ 4-2-10. Computation of Use Tax on Construction Equipment

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.

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## Contact Us

For additional assistance, please contact us:

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 Westminster, CO 80031

**Phone:** (303) 658-2065

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

**E-mail address:** [salestax@cityofwestminster.us](mailto:salestax@cityofwestminster.us)

**Website:** <https://www.cityofwestminster.us>

From the Business menu, choose Westminster Taxes