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## Tax Compliance Guide

### Construction – Public & Private Improvements Topic 373

(01/2011)

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**NOTE: THIS INFORMATION IS PROVIDED BY THE SALES TAX DIVISION. PLEASE DIRECT ANY QUESTIONS REGARDING USE TAX TO THAT OFFICE AT (303) 658-2065.**

The forms referenced in this topic are available on the City website from the Business menu, choose Westminster Taxes.

The *Westminster Municipal Code* imposes a use tax on all construction materials used in making public or private improvements. Tax is due on the cost of all materials whether such materials are acquired from sources within or outside the City. To avoid tax overpayments, contractors and subcontractors must present a *Use Tax Direct Payment Permit* to retailers when purchasing construction materials. Providing this permit will exempt these materials from local sales tax.

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### Direct Payment Permit

#### Public Improvement Agreements

Prior to receiving the Notice to Proceed, the primary contractor must obtain a *Use Tax Direct Payment Permit* from the Sales Tax Division by filing a *Request for Direct Payment Permit* form. Copies of this permit must be furnished to sub-contractors, and must be supplied to retailers when purchasing construction materials to exempt the sale from local sales tax. The exemption from sales tax applies only to construction materials, (tangible personal property which becomes an integral and inseparable part of real property). Construction materials do not include items such as equipment, tools, supplies, or similar items. It is unlawful to use this permit to purchase construction materials for any project other than that specifically designated on the permit. State and other non-municipal taxes may still apply.

#### Landscape and Private Improvement Agreements

When a landscape and private improvement agreement is made, the primary contractor must obtain a *Use Tax Direct Payment Permit* from the Sales Tax Division, prior to obtaining a building permit, by filing a *Request for Direct Payment Permit* form. Copies of this permit must be furnished to sub-contractors, and must be supplied to retailers when purchasing construction materials to exempt the sale from local sales tax. The exemption from sales tax applies only to construction materials, (tangible personal property which becomes an integral and inseparable part of real property). Construction materials do not include items such as equipment, tools, supplies, or similar items. It is unlawful to use this permit to purchase construction materials for any project other than that specifically designated on the permit. State and other non-municipal taxes may still apply.

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### Use Tax Payment

Use tax on the actual cost of all materials used on the project must be paid to the City by one of the following methods.

#### Estimated Pre-payment Method

An estimated amount of use tax is computed and paid with the *Request for Direct Payment Permit* form. The pre-payment is calculated on 50% of the cost of improvements as detailed in the applicable agreement.

The use tax charged on the permit is an estimate of the City use tax due on construction materials used in the project for which the permit is issued. Upon written acceptance by the City, the primary contractor is required to compute the actual use tax due on construction materials, including materials furnished or used by subcontractors or owners. If the actual use tax due exceeds the amount of the pre-payment, the primary contractor must file a *Project Cost Report* and remit any additional tax due within 30 days of the City's written acceptance of the improvements. A *Project Cost Report* is not required if no additional tax is due.

If the actual cost of materials is less than the estimated materials cost, the primary contractor may apply for a refund of the use tax overpaid within three years of the date of acceptance. Any refund will be issued to the primary contractor regardless of who actually made the estimated pre-payment.

### Actual Cost Method

In certain instances, a contractor may request to pay use tax on an actual basis. In these limited cases, the contractor must file monthly returns and remit use tax on the actual cost of materials used during the preceding month for the duration of the project. The primary contractor must include in this monthly computation the cost of materials used by any sub-contractors or furnished by the owner. The *Use Tax Direct Payment Permit* must still be presented to retailers to exempt purchases of construction materials from local sales taxes.

Because the estimated pre-payment method requires a reconciliation of the actual cost of materials with the up-front estimate, neither method will result in a lower tax liability.

### Overpayment of Tax upon Purchase of Construction Materials

Contractors and sub-contractors charged Westminster sales tax by a retailer on construction materials relative to the permitted work may apply to the City for a refund. Copies of all receipts showing that City sales tax was paid to a Westminster retailer who was licensed and authorized to collect City sales tax must be submitted with the signed *Claim for Refund* form within 60 days of the date of purchase. Beyond 60 days, the purchaser will need to seek a refund from the retailer, who may then file a *Claim for Refund* for up to three years after the purchase.

If materials were purchased in a city other than Westminster, and that city's sales tax was paid, Westminster will not issue a refund. The purchaser must apply to that city directly. Sales taxes paid in error to Westminster or another municipality cannot be credited against use tax due on materials.

### Liability of Primary Contractor

The Code specifies that the primary contractor is liable for all use taxes due. In computing the total use tax liability due from construction materials, the actual cost of materials used by any sub-contractors, as well as materials supplied by the property owner or developer, must be included in the computation. Contractors may not avoid use tax liabilities by virtue of private contract provisions.

The City may audit a construction project for up to three years after a *Project Cost Report* is submitted (or

after actual cost returns are filed) to determine if a tax overpayment or deficiency exists. If a *Project Cost Report* is not filed, the tax due may be assessed at any time. Also note that any use tax deficiency automatically becomes a lien upon the real property improved by the addition of the construction materials.

### Related Topics

Construction – Use Tax Reconciliation  
Construction – Equipment

### Citations

*Westminster Municipal Code*  
§ 4-1-7. Returns Required; Time for Filing and Paying Total Tax Liability  
§ 4-1-11. Audit of Records  
§ 4-1-17. Claim for Refund  
§ 4-1-28. Lien for Tax Due  
§ 4-1-36. Statute of Limitations  
§ 4-2-2. Definitions  
§ 4-2-9. Provisions Relative to Construction Materials

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:

City of Westminster  
Sales Tax Division  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

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

**Fax:** (303) 706-3923

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:** <http://www.cityofwestminster.us>  
From the Business menu, choose Westminster Taxes