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## Tax Compliance Guide

*Delivering exceptional value and quality of life*

### Construction – Projects Not Requiring City Building Permits Topic 320

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*Note: This guidance is not an advisement regarding permitting requirements. For information on the applicability of a building permit for a specific project, contact the Westminster Building Division at (303)658-2075.*

The *Westminster Municipal Code* defines “construction materials” as tangible personal property that, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project including public and private improvements. Items will not be regarded as construction materials if they can be removed:

1. Without substantial damage to the structure; and
2. Without altering the functional use of the structure.

In certain cases, construction materials will be used in projects that do not require a building permit. In these cases, the applicable tax character depends on the nature and scope of the project.

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### Time & Materials Work

#### Jobs Utilizing Construction Materials

A contractor performing small repair jobs not requiring a City building permit must do so on a retail, time and materials basis even though the materials may otherwise qualify as construction materials as outlined above.

1. The contractor must obtain a sales tax license from the City.
2. Materials must be purchased for resale without the payment of sales tax.
3. The retailer-contractor must collect sales tax on the purchase price paid by the purchaser.
4. Charges for installation labor are not subject to sales tax if separately stated on the invoice.
5. Charges for freight, delivery, and transportation are subject to sales tax.

Construction materials that are purchased for resale, but are subsequently removed from inventory for use by the

contractor for purposes other than taxable resale are subject to Westminster use tax.

#### Jobs Not Utilizing Construction Materials

Certain items do not qualify as construction materials and must always be sold on a retail time and materials basis as outlined above. This is true even when these jobs require a City building permit. These items include, but are not limited to: carpeting, furniture, appliances, removable fixtures, prefabricated swimming pools and hot tubs, window coverings, heating & air conditioning units, signs, solar energy systems, and other similar completed units of tangible personal property.

In some cases where a City building permit is required to install these items, an estimated amount of use tax may be collected on the permit. This estimate is prescribed by ordinance and is designed to be applicable to a variety of projects. As such, in cases involving the sale of a completed unit of tangible personal property, there may be little or no use tax due from the retailer. Retailers performing this type of work may deduct the equivalent taxable amount (50% of the permit valuation) on their periodic City sales/use tax return (line 3).

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#### Lump Sum Jobs

Contractors employing materials to create or improve real property, whereby the materials become integral and inseparable components of such real property are liable for Westminster sales or use tax on materials regardless of the manner in which they bill for the project. To the extent the contractor has not paid a sufficient, legally-imposed sales tax to a vendor licensed and authorized to collect the same, a use tax must be paid directly to the City. Examples of non-permitted construction may include, without limitation:

- ❖ Certain projects for governmental units (excluding the City of Westminster).
- ❖ Earthwork, erosion control, soil/rock stabilization, slope protection, and excavation support.
- ❖ Roadway construction, paving, surfacing, sidewalk, curb and gutter construction, and traffic control.

- ❖ Certain landscape and irrigation system improvements.
- ❖ Exterior gas, electric, and communication utility construction.

Contractors employing construction materials to create a completed structure or project for a governmental unit for which a building permit is not issued may not avoid the payment of Westminster sales/use tax by billing the project on a time and materials basis, or by use of the provisions in a construction contract or agreement, or by the use of the name of a tax-exempt entity in an invoice or purchase order as the purchaser. No exemption certificate issued by the Colorado Department of Revenue or any other taxing authority will be recognized as a basis for exemption from sales or use taxes levied by the City upon construction contractors.

Contractors constructing improvements for which a City building permit is not issued must obtain a tax account from the Sales Tax Division and file monthly returns accounting for the materials used. This includes materials used by any sub-contractors and materials furnished by the owner.

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## Examples

1. Contractor A is a licensed Westminster plumbing business doing both large scale construction jobs and small repair jobs. Contractor A maintains a retail inventory of parts, which they purchase tax free for resale. Contractor A receives a call from Customer X, a Westminster resident who has a leaky faucet. Contractor A replaces the faucet, charging Customer X \$25 for the faucet and \$50 for an hour of labor. Contractor A must collect tax on the \$25 charge for the faucet.
2. Contractor B enters into a contract for the construction of a new public school. Contractor B must obtain a use tax account from the Sales Tax Division. Each month for the duration of the project, Contractor B must file a return showing the cost of materials used during the preceding month. Contractor B must obtain cost information from any sub-contractors, and include them in the computation of the monthly return. Contractor B must also account for the cost of materials furnished by the public school. Contractor B may take credit for any sales or use tax lawfully imposed and previously paid on any of the materials used.

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## Related Topics

Construction – Equipment  
 Construction – Projects for Tax Exempt Organizations  
 Construction – Public & Private Improvements  
 Construction – Solar Systems  
 Properly Exempted Purchases Converted to Taxable Use

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## Citations

*Westminster Municipal Code*

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

§ 4-2-2. Definitions

§ 4-2-3. Rate; Imposition and Collection; Distribution

§ 4-2-5. Transactions & Items Subject to 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:

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

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

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**E-mail address:** [salestax@westminsterco.gov](mailto:salestax@westminsterco.gov)

**Website:** <http://www.westminsterco.gov>

From the Business menu, choose Westminster Taxes