



Sales 95

Sales/Use Tax Exemption for Affordable Housing Projects

A sales and use tax exemption is allowed for qualifying affordable housing projects. A qualifying project is one that meets the criteria described below regarding a housing authority's ownership interest in the project. In the case of qualifying projects that are not entirely affordable housing, but are instead mixed use, the exemption is only partial and in proportion to the part of the project that is affordable housing.

QUALIFYING AFFORDABLE HOUSING PROJECTS

The sales and use tax exemption is only allowed to affordable housing projects owned by, leased to, or under construction by a qualifying entity. A qualifying entity is an entity that is wholly or partially owned directly by either a housing authority or an entity in which a housing authority has a direct ownership interest. As used in this FYI, the term "housing authority" refers only to city, county, and multijurisdictional housing authorities. Any affordable housing projects or units that are not owned by, leased to, or under construction by a qualifying entity are not eligible for the exemption.

Qualifying projects include new construction and substantial renovation of affordable housing and involve capitalizable expenditures. See §29-4-203(12), C.R.S. for a complete statutory definition of housing authority projects. The sales and use tax exemption only applies to those purchases and property that are acquired, used, or consumed for and during the construction of the qualifying project. Tangible personal property must be either incorporated or consumed in the construction of the project in order to qualify for the exemption. Building materials, fixtures, and appliances qualify for the exemption. Purchases for ongoing, routine maintenance do not qualify. Purchases of tangible personal property that is retained or reused after the completion of the project by either the qualifying entity or the contractor, such as tools or equipment, do not qualify.

Mixed use projects

The exemption is allowed in proportion to the percentage of the qualifying project that is for occupancy by persons of low income. Consequently, qualifying projects that are not entirely affordable housing ("mixed use projects") only qualify for a partial exemption. Mixed use projects are projects that may include, in addition to affordable housing, market rate housing or commercial space. This percentage of a project that is for occupancy by persons of low income is determined by the housing authority on the basis of either cost or square footage.

REQUESTING AN EXEMPTION CERTIFICATE

Qualifying entities and the general contractors they hire can request exemption certificates from the department in order to make purchases for qualifying projects tax-free. Qualifying entities will complete and submit a form DR 0715 Application for Sales Tax Exemption for Colorado Organizations to request exemption certificates. General contractors can request an exemption certificate by completing and submitting form DR 0172 Contractor Application for Exemption Certificate. Along with either application, the entity or the contractor must submit a statement from the housing authority detailing and certifying 1) the housing authority's ownership interest in the project, 2) the percentage of the project that is for occupancy by persons of low income, and 3) the anticipated construction period for the project.

REMITTING TAX FOR MIXED USE PROJECTS

For qualifying mixed use projects, the exemption is allowed in proportion to the percentage of the project that is for occupancy by persons of low income. If an exemption certificate is obtained for a project that is not entirely affordable housing, a sales tax account will be established for the qualifying entity, which must file form DR 0100A Retail Sales Tax Return for Occasional Sales and remit the tax due on a quarterly basis. In filing such returns, the qualifying entity will enter on line 1 the taxable portion of purchases made for the project during the tax period. The taxable portion of the purchases is equal to the total dollar amount of otherwise taxable purchases made for the project during the tax period multiplied times the percentage of the project that is not for occupancy by persons of low income. If the annual sales tax due for a qualifying project is less than \$5,000, the qualifying entity may request approval from the department to file and remit tax annually instead of quarterly.

If sales tax does not apply to any purchases made for a partially exempt project, because such purchases were made out of state, the qualifying entity must file a form DR 0252 Consumer Use Tax Return to report and pay the appropriate tax.

CLAIMING A REFUND

Qualifying entities that have paid sales or use tax on purchases made for qualifying projects may claim a refund of the tax in proportion to the percentage of the project that is for occupancy by persons of low income. The refund claim must be submitted using form DR 0137B Claim for Refund of Tax Paid to Vendors. Except as described below, any claim for refund must be made in accordance with the general rules outlined in the instructions for form DR 0137B. Any claim for refund submitted for a qualifying project must also include a statement from the housing authority detailing and certifying the housing authority's ownership interest in the project and the percentage of the project that is for occupancy by persons of low income.

In the case of refund claims for state sales tax paid prior to September 30, 2016, an affidavit signed by the housing authority under penalty of perjury may be submitted in lieu of receipts. The affidavit must affirm that the refund claim is for sales and use tax that was actually paid to vendors or directly to the Department of Revenue and that the amount of the refund claim includes no local or special district taxes. A statement from the housing authority detailing and certifying the housing authority's ownership interest in the project and the percentage of the project that is for occupancy by persons of low income is required for any refund claim.

The exemption does not apply and no refund may be claimed for any city, county or special district sales or use tax paid prior to August 10, 2016.

FURTHER READING

State law and regulation

§ 39-26-704(1.5), C.R.S. (authorizing the exemption)

§ 29-4-227, C.R.S. (projects eligible for the exemption)

§ 29-4-203(12), C.R.S. (statutory definition of "project")

§ 29-4-203(1), C.R.S. (city housing authorities)

§ 29-1-204.5, C.R.S. (multijurisdictional housing authorities)

§§ 29-4-502(1) and 507, C.R.S. (county housing authorities)

Department Rule 1 CCR 201-4, 39-26-704(1.5)