

# CITY OF ASPEN

## USE TAX INFORMATION & GUIDELINES



THE CITY OF ASPEN

### BASIC INFORMATION

Effective 1/10/08, City of Aspen levies a use tax on construction materials.

Use tax is a tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming inside the corporate limits of the City of Aspen, construction materials that are acquired inside or outside of the corporate limits of the City of Aspen upon which a City of Aspen sales tax is not paid.

Use tax is complementary to sales tax, and is due when City of Aspen sales tax is not paid on construction materials and fixtures and/or landscaping materials that are imported into the City.

Construction materials are defined below.

#### Rates

The use tax rate is 2.10% (0.0210).

#### Applicability & Filing Returns

The use tax requirement applies to all contractors and owners that use construction materials in the City. The liability is shared jointly between the general contractor and the owner, defined in these guidelines as "Purchaser."

Generally, construction materials purchased outside the City and delivered into the City should not be charged sales tax by the vendor as use tax should be paid on those materials. Materials purchased outside the City and imported by the Purchaser for projects inside the corporate limits of the City of Aspen are subject to City of Aspen use tax.

In all cases, a use tax deposit is required for work performed in the City that consumes construction materials, including non-permit work and landscaping. Some exemptions are allowed [see 2007 City Resolution 55 Section 23.52.4]; including any master permit with a total valuation below \$100,000 shall be exempt from use tax.

The use tax deposit is paid when the master permit is issued. For a project for which a use tax deposit has been paid, materials can be purchased without paying City of Aspen sales tax or any other municipal sales tax. Upon payment of the use tax deposit, Purchaser will be issued a Use Tax Certificate which should be presented to vendors in order to waive sales tax.

The use tax deposit calculation is based on master permit valuation. The first \$100,000 of each master permit valuation shall be exempt from use tax. After deducting \$100,000 from the master permit valuation, 2.1% shall be charged on 50% of the remaining valuation.

## **Final Reconciliation and Audit**

The use tax deposit made upon master permit issuance is an estimation of the tax liability. The Purchaser has 90 days from issuance of the certificate of occupancy to submit a final reconciliation return, which reconciles the estimated materials at time of deposit to actual materials used on the project. This is required for every project.

The final reconciliation return will demonstrate that (1) the Purchaser has met their use tax obligation, or (2) the Purchaser is due a refund, or (3) the Purchaser is required to make an additional use tax payment to meet their use tax obligation. A job cost report is required to be submitted with each return. All subcontractor material costs, along with general contractor and owner material costs must be included in the return. Subcontractor affidavits may be filed to validate material costs; however, additional support may be required such as a subcontractor job cost report and/or subcontractor invoices.

(1) If the Purchaser calculates that they have met their use tax obligation, the final reconciliation return will add up to zero, indicating that you have adequately estimated the materials used for the projects and have paid the taxes owed.

(2) If a refund is due, the final reconciliation return will show an overpayment and the form will act as a request for a refund. If actual materials were less than estimated, the Purchaser has 90 days from the certificate of occupancy to apply for a refund of use tax overpaid, otherwise, the entire deposit will be forfeited.

(3) If the use tax was underpaid, the calculations will show that an additional payment is due. A check can be included with the final reconciliation return. Or, the Purchaser may choose to pay the additional use tax due within 90 days of the completion of the project. If paid within 90 days, then penalty and interest are not assessed. Payment after 90 days of the issuance of certificate of occupancy will be subject to penalties and interest.

The City has three years from the issuance of certificate of occupancy to conduct an audit.

## **DETAILED GUIDELINES**

If you are purchasing and/or installing construction materials and fixtures in City of Aspen you are responsible for being aware of the following use tax guidelines.

### **History**

The City of Aspen voters approved the 2.1% use tax in November 6, 2007, to be effective on all materials purchased after 1/10/2008. Revenues derived from this use tax shall be used to pay the cost of operation, maintenance, capital replacement, and improvement of the City transit service and pedestrian amenities; and the full amount of revenues derived from use taxes may be retained and expended by the City notwithstanding any state revenue or expenditure limitation.

The 2.1% use tax will not expire but will remain in force unless it is repealed by a majority of the voters.

The use tax is to be collected on construction materials purchased outside of City of Aspen (or inside the City where sales tax has not been paid) for use within the City.

The City of Aspen use tax rate for any project started on or after 1/10/2008 is 2.1%. The multiplying factor is .021 times the materials cost amount. For deposit purposes, the estimated materials cost is calculated from the Purchaser declared master permit valuation amount: the first \$100,000 of the master permit valuation is not taxable. The remaining amount is multiplied by 50% times 2.1%.

### **What is use tax?**

Use tax is complimentary to and supplemental to sales tax. If you pay City of Aspen sales tax on construction materials purchased in or delivered into City of Aspen, you do not owe City of Aspen use tax on those same materials. The use tax is applied only once to the first use of construction materials.

### **What is considered a “construction material”?**

#### **Definition of construction materials from the City of Aspen Municipal code 23.04.010:**

Tangible personal property which, 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. This term includes, but is not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal site lighting, steel, stone stucco, tile, trees, shrubs, other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

### **Is the amount paid for fabrication services subject to City of Aspen use tax?**

Yes. When the Purchaser purchases both the materials and fabrication service from the same third party, charges for fabrication labor are included in the use tax calculation. The true object of such a transaction is the acquisition of a custom made article. In other words, use tax applies to charges for manufacturing, producing, fabricating, and processing tangible personal property which has been made-to-order or tailor made for the customer. Therefore, use tax is computed on the purchase price paid to acquire the machined item and the service costs components are included in the use tax calculation.

### **Are appliances subject to use tax?**

Generally speaking, appliances are not subject to construction use tax. However, some appliances are considered fixtures and subject to the use tax. These fixtures are subject to the tax because they are not readily removable as a unit and they cannot be removed without damage to the structure or impairing the use of the fixture.

### **Who is responsible for paying the tax?**

Every person or business using or consuming construction materials in City of Aspen must report the acquisition cost of all materials used (including materials purchased in City of Aspen) and remit a use tax deposit directly to the City.

This is a liability shared by contractors and property owners. Payment of the use tax deposit is due when the master permit is issued.

The property owner is ultimately responsible for payment of the use tax if the contractor using the materials does not pay. In the event of nonpayment or incomplete payment, a use tax lien may be filed and foreclosed against the real property benefited by the construction materials and/or the real property of the contractor.

**Use tax License:** There is no City of Aspen use tax license requirement.

### **How is the Tax Paid?**

1. Periodic Returns. Allowed only for projects permitted prior to 1/10/2008. Purchases of construction materials for projects permitted prior to the 1/10/08 shall have until 4/9/2008 to demonstrate compliance. Compliance shall be considered complete when the purchaser either provides an estimated prepayment of use taxes in accordance with paragraph A.1 of Ordinance 55, or Purchaser submits monthly use tax returns and payments in accordance with paragraph (A).2 of this section. Returns and payments are due on the 20th day of the month for the prior month.

Mail to: City of Aspen Finance Department, 130 So. Galena Street, Aspen, CO, 81611

Note: If filing monthly returns, you are required to file a return for each month regardless of whether or not any use tax is due. This is called a zero return.

2. Project/Job Final Returns (Deposit Method). The deposit amount is based on the master permit project valuation. The first \$100,000 of the master permit project valuation is exempt and therefore deducted. After deducting \$100,000, 50% of the master permit project valuation is multiplied by the 2.1% use tax rate. Deposit is due when the master permit is issued.

### **Use tax return due dates; penalties and interest**

Penalties and interest are assessed on late payment of taxes as follows:

Penalty: Late return and/or payment	10.0% of unpaid tax
Interest: On unpaid taxes	1.5% per month

### **If I pay City of Aspen Sales Tax on all materials, do I need to file a use tax return?**

Yes, you still need to file a use tax return even if you paid City of Aspen sales tax on all materials; but you will not owe any use tax.

**If I pay sales tax on all materials but not all paid in City of Aspen, do I need to file a use tax return?**

For master permits issued before 1/10/08, yes, you need to file a return for all materials consumed in the City after 1/10/08.

For master permits issued after 1/10/08, only the deposit method is allowed. After the certificate of occupancy is issued, the Purchaser must complete a final reconciliation return. The Purchaser has 90 days to complete the final reconciliation return and request a refund if appropriate. The Purchaser may complete the final reconciliation return and waive the right to a refund if they deem that the deposit was adequate to meet their use tax obligation. If the Purchaser completes the final reconciliation return and an additional payment is needed to meet their use tax obligation, that payment must be submitted with the final reconciliation return. The final reconciliation return is due 90 days from the issuance of certificate of occupancy.

**Does it matter where the materials are delivered or picked up?**

No, the use tax applies to all materials consumed (used) within the City.

**What if I am a supplier/subcontractor and I charge the Purchaser City of Aspen Sales Tax when I deliver the materials, do I need to file a use tax return also?**

No. The Purchaser is responsible for compliance with this ordinance.

**Records and Audits**

All use tax returns are subject to audit. Taxpayers must keep and preserve all invoices, receipts and statements showing such purchases of construction materials for a minimum of three years after the completion of project. The City of Aspen Finance Department may conduct an audit of those records within the three years to verify the accuracy of the actual cost of construction materials reported per returns filed and the amounts of use taxes paid.

For more information on sales & use taxes please contact the following staff in the City of Aspen Finance Department:

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City of Aspen Finance Department  
Use Tax  
130 So. Galena Street  
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Disclaimer: This summary is designed for general informational purposes; it is not intended to replace the actual applicable sections of the City of Aspen Municipal Code.