

## DIRECT PAYMENT PERMIT

### REGULATION ~~(39-)~~26-103.5.1~~(C)~~

~~The direct pay permit can only prevent the payment to vendors of, local government sales taxes collected by the Colorado Department of Revenue under this provision. The permit provision has no effect for local self-collected sales taxes. Under House Bill 99-1005 that enacted this section, amendments to local government sales tax statutes at C.R.S. §29-2-106(3)(c)(II), C.R.S. §30-20-604.5(2)(a.5)(II), C.R.S. §32-9-119(2)(c)(II), C.R.S. §32-13-110(2)(b)(II), C.R.S. §32-14-114(2)(b)(II), and C.R.S. §32-15-110(2)(b)(II), C.R.S. enable the vendor to remove the sales tax upon purchase, and for these same sales taxes require the buyer to make direct payment of the local sales tax due. No sales tax which was applicable at point of purchase may be avoided, because this section requires the buyer to make the direct remittance of any tax so prevented at the point of purchase regardless of the existence of a local use tax. Thus municipal and county sales taxes collected by the Department, Local Improvement District sales tax, and RTD, GFD, BD, and FD sales taxes become the liability for the permit holder to pay directly to the Department of Revenue.~~

- (1) **General Rule.** A buyer who holds a direct payment permit ("Qualified Buyer") shall remit sales and use taxes directly to the Colorado Department of Revenue ("Department") and not to the retailer. Retailers who sell taxable goods or services to a Qualified Buyer shall not collect sales tax from such buyers.
- (2) **Buyer Qualifications.** An applicant, which can be an entity or individual, for a direct payment permit must meet the following conditions.
  - (a) *Dollar Threshold.* Applicant must have had a minimum of \$7,000,000 in purchases on which Colorado state sales or use tax was owed during the twelve months preceding the application. The dollar threshold excludes purchases that are exempt from Colorado state sales and use tax, even if such purchases are subject to state-administered local sales or use taxes. See, §29-2-105, C.R.S. for a description on local tax base. For example, the dollar threshold excludes exempt wholesale purchases of inventory. Tangible personal property that is built on or affixed to real property, such as building materials and supplies, are not included in determining the dollar threshold. See, §39-26-103.5(1)(a), C.R.S.
  - (b) *Good Standing.* Applicant cannot have been delinquent in collecting, remitting, or reporting any sales, use, income, or other tax administered by the Department for the immediate three years prior to the date applicant submits its application. If applicant has had an obligation to collect, remit, or report such taxes for less than three preceding years from the date applicant submits its application, then applicant cannot have been delinquent of any tax administered by the Department from the date that any such obligation first began. The Department can waive this requirement if applicant can demonstrate that the failure to comply with the collecting, reporting and remitting requirements was due to reasonable cause. In determining whether reasonable cause exists, the Department will consider, among other relevant facts, whether:
    - (i) the failure was due to willful or reckless disregard of applicant's tax obligations;
    - (ii) applicant failed to comply on more than one occasion;
    - (iii) the magnitude of the failure was significant in terms of dollars or time; and

- (iv) applicant made subsequent efforts to avoid future failures.
  - (c) *Accounting Systems and Practices.* Applicant must have in place an accounting system and set of practices that are acceptable by the Department's standards. The accounting system and practices must fully and accurately report the amount of sales or use tax to be reported on the appropriate sales or use tax return(s), including state-administered local tax jurisdictions. The issuance of a direct payment permit to an applicant does not foreclose the Department from either revoking a direct payment permit or making assessments of tax, penalties, or interest if such system or practices are not adequate to enable the Department to fully and accurately collect and allocate to cities, counties, and other local taxing entities all the sales and use taxes that the Department collects on behalf of such entities.
  - (d) A Qualified Buyer is not required to be subject to the collection, remittance, and reporting requirements for sales taxes in order to obtain such a permit. Rather, a Qualified Buyer can be subject to the collection, remittance, and reporting requirements for any tax administered by the Department.
- (3) **Effective Date.** A direct payment permit is effective from the date of issuance until December 31 of the third year following the year in which it is issued.
- (4) **Buyer's Funds.** When a Qualified Buyer uses a direct payment permit, the Qualified Buyer must use its own funds when paying a retailer for a transaction to which the direct payment permit applies. Retailers cannot accept payment from persons other than the Qualified Buyer, including payment from the personal funds of an individual if the permit is held in the name of an entity. Retailers must collect tax if a Qualified Buyer is making a purchase with funds other than the Qualified Buyer's funds and will be liable for unpaid taxes for transactions paid in contravention of this subsection (4).
- (5) **Revocation of Permits.**
- (a) The Department may revoke a direct payment permit if the Qualified Buyer violates any statute or rule governing the administration of taxes, or if in the opinion of the Department the Qualified Buyer becomes otherwise unable to meet any of the conditions for holding a direct payment permit. The Department shall provide written notice of the revocation by first-class mail to the last known address of the Qualified Buyer thirty days prior to the effective date of such revocation. The notice of revocation shall set forth:
    - (i) the factual and legal basis for revocation,
    - (ii) advise the Qualified Buyer of its right to appeal, and
    - (iii) the date the Department issued the notice.
- The Department will issue a denial of a direct payment permit application in the same manner.
- (b) An applicant who is denied a permit or a Qualified Buyer whose permit was revoked, may appeal the decision by submitting to the Department's executive director a written request for hearing. The notice of appeal must be received by the Department within thirty days of the date of issuance of the notice of revocation or denial and contain the permit holder's name, address, permit account number (for revocations), and the legal and factual basis explaining why the permit should not be revoked or denied. Qualified Buyer's notice of appeal shall suspend the effective date of the revocation until a final order resolving the

appeal is issued by the executive director. The executive director or director's designee shall conduct a hearing and issue a ruling on such appeal within a reasonable time.

**(6) Reporting Requirements.**

- (a) A Qualified Buyer holding a direct payment permit must directly remit to the Department all state and state-administered city, county and special district sales taxes that would have been collected by the retailer had the Qualified Buyer purchased such goods or services without a direct payment permit.
  - (i) *Exceptions.* A Qualified Buyer holding a direct payment permit cannot pay county lodging taxes and county short-term rental taxes directly to the Department. Retailer must collect such taxes from the Qualified Buyer and remit them to the Department. See, §30-11-107.5 and §30-11-107.7, C.R.S.
- (b) A Qualified Buyer must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Buyer purchases taxable goods or services with a direct payment permit.
- (c) The vendor must retain a copy of Qualified Buyer's direct pay permit.

**(7) Determining Local Sales Taxes.**

- (a) *Service fees.* With regard to sales taxes only, a Qualified Buyer may deduct from its remittance to the Department the service fee for state sales tax and any local service fee(s).
- (b) A sale occurs when and where a Qualified Buyer first takes title or possession of the good(s) or where a taxable service is performed.
- (c) If the Qualified Buyer takes title or delivery of any taxable good(s) within the State of Colorado, then the Qualified Buyer shall remit the state-administered local sales taxes to the local jurisdiction(s) in which the Qualified Buyer took the title or delivery.
- (d) If the Qualified Buyer takes title or delivery of any taxable good(s) outside the State of Colorado, then the Qualified Buyer shall remit use tax for the location where the Qualified Buyer first uses, stores, or consumes the goods.
- (e) Sales and use taxes of home rule cities and counties cannot be paid by direct payment permit to the Department, unless the Department has agreed to collect such taxes.
- (f) *Examples.*
  - (i) Qualified Buyer takes delivery of goods at seller's store which is located in the City and County of Denver, Regional Transportation District (RTD) and Scientific and Cultural Facilities District (CD). Qualified Buyer remits state sales tax and RTD/CD sales taxes to the Department because buyer took possession in these state-administered local tax jurisdictions. Qualified Buyer does not remit the City and County of Denver sales taxes to the Department because Denver is a home rule city and county and the Department does not administer their local taxes.
  - (ii) Seller, who is located in Arapahoe County and in RTD/CD special districts, ships goods with its own vehicle, or engages a common carrier (e.g., United States Postal Service, UPS, or other common carrier), to Qualified Buyer which is located in that portion of El Paso County that also includes the Pikes Peak Rural

Transportation Authority. Qualified Buyer does not remit Arapahoe County or RTD/CD special districts sales taxes because the sale does not occur in those local tax jurisdictions. Qualified Buyer remits El Paso County and Pikes Peak Rural Transportation Authority sales taxes because the sale takes place in those state-administered local tax jurisdictions.

- (iii) The same facts occur as in Example ii, except Qualified Buyer engages a third-party transportation company to pick up the goods from seller's store. The Department will presume the third-party transportation company is acting as Qualified Buyer's agent and the sale occurs in the local tax jurisdiction in which the third-party takes delivery from seller. Therefore, Qualified Buyer remits Arapahoe County, RTD, and CD special district sales taxes to the Department.