

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

---

**Rule 39-26-105(3). Documenting Exempt Sales**

**Basis and Purpose**

The statutory basis of this rule is §§ 39-21-112(1) and 113, C.R.S. and §§ 39-26-102(19), 102(22), 105(3), 107, 204(2), 209, 703(1), 704(1), 708, 713(2)(d) and 718, C.R.S. The purpose of this rule is to establish the requirements a retailer must meet to be relieved of liability for the collection of sales and use tax.

- (1) *General Rule.* A seller must exercise due diligence to verify a purchaser's claim for exemption from sales or retailer's use tax and maintain adequate and complete records to demonstrate the seller's due diligence. If the Department subsequently finds a transaction was not exempt at the time of sale, a seller who has complied with this rule's requirements will be considered to have met its burden of proof.
- (2) *Seller's Due Diligence Requirements at Time of Sale*
  - (a) A seller must verify that the purchaser's sales tax license or exemption certificate is current and valid at the time of the sale.
    - (I) *Verifying a Colorado License or Certificate* - A seller may inspect a physical copy of the license or certificate for completeness and to ensure the license or certificate has not expired. If the seller relies on a physical copy of the license or certificate for verification, the seller must maintain a copy of the document for their records. Alternatively, a seller may elect to verify that the license or certificate is valid using the Department's online verification system. To verify that a license or certificate is current and valid, a seller can go online to <https://www.colorado.gov/revenueonline/> and follow the link to "Verify a License or Certificate."
    - (II) *Out-Of-State Purchasers* - A seller may accept from a purchaser located outside of Colorado a resale license, exemption certificate, or other authorized documentation from the issuing-state. The seller must keep a copy of the document for their records. A seller must also have the out-of-state purchaser complete a Department issued Exemption Certificate (DR 0563) or Affidavit of Exempt Sale (DR 5002). See C.R.S. § 24-60-1301 for more information on out-of-state exemption documents.
    - (III) *Recurring Business Transactions* - A seller who has verified that a purchaser has a current and valid license or certificate is not required to verify again the same license or certificate for subsequent purchases made during the calendar year, unless the seller has reason to believe that the purchaser no longer has a current or valid license or certificate. A seller must keep records identifying the purchaser, license or exemption number, items purchased, and the form of

payment for all subsequent recurring business transactions for that calendar year. A seller must re-verify the purchaser's license or certificate in each subsequent calendar year.

- (b) A seller must consider whether the nature of goods or services sold is consistent with the purchaser's claim that the sale is exempt from sales or retailer's use taxes.
    - (I) For sales to wholesalers, the seller must reasonably conclude that the goods sold are reasonably for resale in the course of purchaser's ordinary business.
    - (II) For sales to exempt organizations, the seller must reasonably conclude that the goods or services are reasonably used exclusively in the conduct of the organization's ordinary exempt functions and activities.
  - (c) Sellers must verify that the purchase is made directly from the funds of the entity claiming the exemption from sales or use tax. This requirement is only satisfied if the seller accepts payment by a credit card or check drawn from an account in the name of the entity claiming the exemption. A seller exercising due diligence is not required to verify the source of the funds if the purchases total less than \$250.
- (3) Burden of Proof and Record Keeping
- (a) There is a strong presumption that any sale of tangible personal property is subject to taxation and exemptions are rare exceptions to this rule.
  - (b) A purchaser has the burden of demonstrating to the seller that the purchaser is exempt from sales or retailer's use tax with respect to the purchase.
    - (I) *Disputed Transactions* - A seller who has not verified the purchaser's eligibility for exemption in accordance with this rule must collect tax at the time of sale. The purchaser may then file a claim for refund with the Department. For information on Disputed Transactions, see §§ 39-26-102(22) and 703, C.R.S.
  - (c) A seller has the burden of demonstrating to the Department that the seller complied with this rule with respect to any purchase for which the purchaser claimed exemption.
    - (III) *Record Keeping Required* - Sellers must keep adequate and complete records of all sales transactions. Additional information that must be retained by the seller when exempting a purchaser from sales or retailer's use tax include; the name and address of the purchaser, purchaser's license or certificate number, a copy of the license or certificate if applicable, the date of sale, the purchase price, a description of the goods or services sold, and the name on the credit card or check used by the purchaser to pay for the transaction.
- (4) *Sellers Requirements Under Audit*. If the Department finds the records of a seller do not demonstrate compliance with the requirements of this rule, the Department shall allow the seller 90 days to collect information sufficient to comply with the requirements of this rule. The Department may extend the 90-day period for good cause shown.

Cross Reference(s):

1. How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders, FYI Sales No. 1
2. For additional information on exempt sales for resale, see §39-26-102(19), C.R.S.

3. For additional information on exemptions for Charitable Organizations, see §39-26-718, C.R.S.
4. For additional information on Governmental Purchases Exemptions, see FYI Sales No. 63, §39-26-704, C.R.S