

## **Retail Sale Defined**

*69.05.010 Retail sale means any sale of real or tangible personal property, including barter, credit, installment and conditional sales, for any purpose other than resale in the regular course of business. The delivery of property in the City and Borough by a seller whose principal place of business is outside the City and Borough to a buyer or consumer is a retail sale made within the City and Borough if such retailer maintains any office, distribution, or sales house, warehouse or any other place of business, or solicits business or receives orders through any agent, salesman, or other type of representation within the City and Borough.*

A retail sale means any transfer of ownership of, title to, or possession of, real or tangible personal property for consideration for any purpose other than resale. Retail sale includes the exchange of property for property, the sale of property for money, or the sale of property for services. Retail sale includes every transaction constituting a sale, whether conditional, installment, credit, barter, or otherwise.

In general, a retail sale or sale at retail includes all sales of real or tangible personal property. A retail sale is a sale in which the buyer is the end user or consumer. It is the retail sale that is subject to the sales tax. Thus, a business entity may be a buyer or consumer and must pay the tax on those goods it consumes or uses.

The sales tax is a 'destination tax', that is, the point of delivery or point at which possession is transferred by the seller to the buyer or designee controls the tax incident. In other words, a sale is taxable at the place where the real or tangible personal property is delivered or the point where possession is transferred by the seller to the buyer or his designee.

Delivery of the item determines the location of the sale. Delivery is in CBJ when:

- a. the seller transfers physical possession or control of the item to the buyer in CBJ, the buyer would be exercising control of the item if they request the item be delivered by common or contract carrier to any location.
- b. the seller places the item in the mail addressed to a location within CBJ, or
- c. the seller gives the item to a common or contract carrier directed to a location in CBJ.

Delivery occurs in CBJ even if the buyer intends to take the item outside CBJ.

If the place of delivery cannot be determined, or if there is no delivery, then the sale occurs where title is transferred.

- a. Title will normally transfer where the property is located at the time of sale.
- b. When the seller retains possession of the item, title will transfer where the item is located and used.
- c. Ownership will transfer at some other time or location only when there is clear evidence at the time of the sale that both the seller and the buyer intended that title should pass at some other time or place and that the time or place has a reasonable basis other than tax avoidance.
- d. Freight terms such as FOB shipping point or FOB destination are not sufficient to show where title transfers.
- e. Declarations of the parties made after the completed transaction are of little value as evidence.

When a physical item is not part of the transaction, the following will be considered to be the location of the sale. The sale of utilities occurs where the meter is located or the connection is furnished. The sale of computer software transferred electronically occurs where the software is used.

The following sets forth the conditions under which out-of-CBJ merchants are required to collect and remit the sales tax on deliveries to customers in CBJ. A merchant is required to collect and remit the tax imposed under CBJ Ordinance 69.05 if within CBJ they directly or by any agent or other representative:

1. Owns, leases, or maintains an office, repair shop, parts department, purchasing office, employment or recruiting office, warehouse, stock of goods, mobile stores, or other place of business.
2. Makes repairs or provides maintenance.
3. Collects current or delinquent accounts.
4. Investigates credit worthiness.
5. Provides installation.
6. Conducts training courses, seminars or lectures.
7. Provides technical assistance or services.
8. Approving or accepting orders.
9. Repossessing property.
10. Securing deposits on sales.
11. Picking up or replacing damaged or returned property.
12. Hiring, training, or supervising personnel.
13. Providing shipping information and coordinating deliveries.
14. Consigning tangible personal property to any person, including an independent contractor.

### **Point of Delivery**

Point of Delivery means the location at which the property or a product is delivered or service performed. For products and services delivered or transferred electronically, point of delivery is the billing address of the buyer or consumer.

## **REAL PROPERTY SALES**

Principals: Contractors (Speculation Builders), Developers (Lots), Real Estate Agents, Title Companies, Individuals

Contractors that build on speculation are holding houses built as inventory.

Developers that develop lots are holding lots as inventory.

Real Estate Agents & Title Companies are providing a service. (The service can be provided to contractors, developers or individuals).

Individuals are selling the personally owned lot or house and are not in the business of selling this type of property.

### **Contractors/Developers:**

For Contractors and Developers that use the services of a Real Estate Agent in selling the property two (2) separate transactions are taking place:

1. The sale of the speculation built house or the sale of the developed lot. (Retail Sale)
2. The services provided by the Real Estate Agent in selling the speculation built house or developed lot. (Service performed).

The Contractor and Developer would be liable for collecting and remitting the sales tax on the retail sale of the speculation built house or the developed lot. If the house or lot is located in Juneau, it would be subject to the CBJ sales tax. If the house or lot is located outside of Juneau, then the sales tax rate for that jurisdiction would apply.

The Real Estate Agent would be liable for collecting and remitting the sales tax on the service performed for the Contractor or Developer.

**NOTE:** The location of the speculation built house or lot does not determine the taxability of a service, the place where the service is received determines the taxability of the transaction. Real Estate Agents/Title Insurance Companies please review the definition of a Services section.

Sale of a single item (speculation built house or lot) may qualify under the “cap on the sale of a single item.” See Administrative Guideline 421.

### **Individual:**

An individual sells a developed lot or house without the services of a Real Estate Agent. The individual is not in the business of selling lots or houses and would be exempt from collecting and remitting the sales tax under CBJ 69.05.040 (1). However, the individual contracts a service with a Title Insurance Agency to complete the sale. The Title Insurance Agency is providing a service, if performed within CBJ, sales tax would need to be collected and remitted on the service they are providing.

An individual sells a developed lot or house with the services of a Real Estate Agent. The individual is not in the business of selling lots or houses and would be exempt from collecting and remitting the sales tax under CBJ 69.05.040 (1). However, The Real Estate Agent would collect and remit sales tax on the service they are providing.

**SALE FOR RESALE:**

A Contractor building on speculation, a Developer or Real Estate Agent may purchase a spec house or developed lot for resale. Please contact the Sales Tax Office to determine if the transaction you are considering may qualify under CBJ 69.05.040 (31) or (32).

## Services Defined

*69.05.010 Services means all services of every manner and description that are performed or furnished for consideration whether in conjunction with the sale of goods or not, but does not include services rendered by an employee to an employer.*

The taxability of services encompasses a wide scope of activities. In fact, any service is subject to taxation unless CBJ law has specifically made it exempt. With respect to the charge made for services, where the services are received controls the tax incident, a sale takes place in CBJ when the services are *received* in CBJ.

Under CBJ sales tax code received is defined as:

- (1) Taking possession of personal property or goods;
- (2) Making first use of services;
- (3) Taking possession or making first use of digital goods, whichever comes first.

The term “received” does not include temporary possession by a shipping company on behalf of the buyer or consumer

## Employee versus Independent Contractor

If the people you hire are employees and not independent contractors, you will withhold state and federal income taxes from their paychecks, withhold and pay Social Security and Medicare, and pay state and federal unemployment insurance. If the people you hire are independent contractors, the responsibilities listed above are theirs, not yours.

If you are required to obtain a State of Alaska business license, you are not considered to be an employee.

The Internal Revenue Service - not our department - is the final word on whether or not a worker is an employee or an independent contractor. If you cannot determine a worker’s status for yourself and want the IRS to determine whether a worker is an employee or not, file federal form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the IRS. To obtain the form, call 1- 800-829-1040 or go to the IRS Web site CBJ will follow the IRS determination.

The following are examples, although not inclusive of taxable services.

## Taxable Services

### Accounting, Auditing, and Bookkeeping Services

### Amusement Establishments, Recreational Services, and Athletic Contests

**Including:** movies; plays; musical and dance performances; amusement parks; athletic contests; athletic instructional schools; billiard and pool establishments; bowling alleys; dance halls; studios and dance schools; day camps; exposition operations; fireworks display services; hunting and fishing guides; judo or karate instructions; membership clubs in sports and recreation

activities; operation of fishing lakes; racing (including track operations); river rafting; professional sports clubs and promoters; public golf courses; sight seeing tours; ski instruction; swimming pools; ticket sales offices for sporting events; tours; carnivals; circuses; rodeos, and all other events where a ticket or admission fee is required.

### **Amusement Machines and Devices**

**Including:** jukeboxes, video games; pinball machines; arcades and other mechanical games and coin-operated devices used for commercial purposes.

### **Auctioneer Services/Clerking Services**

An auctioneer's commissions or fees are subject to tax.

### **Business Services**

*Including:* adjustment and collection agencies; appraisers; bail bonding; blueprint service and photo copying services; business brokers; commercial testing laboratories; computer data processing services and fees or access charges; consumer credit reporting agencies; decoration service for special events; detective and protective agencies; employment agencies; engrossing of diplomas, resolutions, etc.; exterminating services; florist telegraph service; handwriting analysis; hotel reservation service; insurance adjusters; interior decorators; lecture bureaus; limousine services; locksmiths; locksmith shops; management; consulting and public relations service; news syndicates (such as various press services); repossession services; press cleaning; temporary help services; trading stamp services; water softener services; and window cleaning service; promoters of home shows; sales agent commissions, speakers bureaus; service of fire extinguishers; sign painting and lettering shops; stenographic services (including court reporting services and various other typing services); swimming pool cleaning and maintenance; temporary help services; trading stamp services; water softener services; and window cleaning.

### **Carpet Laying**

**Including:** asphalt tile installation; carpet laying or removal service; fireproof flooring construction; floor laying, scraping, finishing and refinishing; wood flooring; hardwood flooring; linoleum installation; parquet flooring; resilient floor laying; vinyl floor tile and sheet installation.

### **Coating, Engraving and Allied Services**

**Including:** electroplating; plating, anodizing; coloring and finishing of metals and form products.

### **Communications**

**Including:** Cable vision service; subscription for closed circuit television; stock ticker service; telegraph, telephone, or other miscellaneous communications services.

### **Drapery Installation**

### **Engineering, Architectural and Surveying Services**

### **Equipment Rentals with an operator**

### **Janitorial and other Cleaning Services**

### **Insurance Related Services**

**Including:** third party administrators; claims adjusters; loss prevention; advisory; appraisal; ratemaking; consulting; claims processing; managed care plans. **Excluding:** commissions received from the sale of insurance policies.

### **Internet Services**

**Including:** Internet access service; domain fees; design or placement of ads on the Internet; web hosting services; and other miscellaneous services.

### **Lawn and Garden Services**

**Including:** garden maintenance and lawn care.

### **Legal Services**

**Including:** the services of attorneys, legal aid services, patent solicitors, referees in bankruptcy.

### **Membership Fees Metal**

### **Mining Services Miscellaneous**

### **Repair Services**

**Including:** antique repair and restoration; armature rewinding shops; bicycle repair; bail bonding; boat repair; camera repair shops; cesspool cleaning; electrical and electronic repair shops; gunsmith shops; key duplicating; lawnmower repair; leather goods repair; motorcycle repair; motor repair shops; musical equipment repair; office equipment repair; piano tuning and repair; radio and television repair; appliance refrigeration; window air-conditioning service and repair shops; reupholster and furniture repair; typewrite repair; watch, clock and jewelry repair.

### **Personal Services**

**Including:** baby-sitting referral services; barbershops; beauty spas; beauty shop; carpet and upholstery cleaning; dating services; credit counseling; adjustment services; dry-cleaning; garment pressing; health clubs; industrial laundries; linen supply; massage practitioner or technician; photographic studios; privately operated wedding chapels; power laundries; reducing salons; shoe repair shops; installation of draperies and blinds; valet parking.

### **Transportation Services**

Transportation services within CBJ boundaries. These taxable services include the transportation of tangible personal property or passengers.

### **Veterinarian and Animal Specialty Services**

Including the boarding, training, grooming, kenneling and breeding of animals other than livestock.

### **Other Taxable Services**

**Including:** the service of real estate agents; loan brokers; dog groomers; counseling and planning services; tree planting and trimming services.

## Rental Defined

"Rental" means the agreeing by the owner to give exclusive use of property to another for a consideration and for any period of time under any one agreement. With respect to the charge made for renting or leasing real or tangible personal property, where the property is located controls the tax incident, a sale takes place in CBJ when the property is located in CBJ.

All rentals and leases of property, including rental of commercial real property, but excluding residential housing rentals, are subject to the sales tax. (See exception for Financing Lease below). The tax is collected over the stream of rental payments, i.e., added to each monthly payment.

Amounts to be included when determining the sales price for sales tax:

1. Amounts designated as finance charges, carrying charges, service charges or interest, regardless if these charges are billed separately.
2. Fees for filing the UCC financing statement.
3. Freight and delivery costs.

Exclusions from the sales tax:

1. Out-of-Borough. The taxability of a rental is determined by the location of the rental property. If the property is located in CBJ, it is subject to the levy of the sales tax. If the property is located outside of the taxing jurisdiction of CBJ, it is not subject to the CBJ sales tax. The lessor must be able to document that the property was located outside CBJ. The documentation may be either shipping documents or a sales tax return filed with another taxing jurisdiction. *This type of transaction would not be considered "exempt" from the CBJ sales tax but would be considered not subject to the levy of the CBJ sales tax. The lessor would not include this transaction when reporting Gross Sales on the CBJ sales tax return.*
2. Insurance premiums. If the lessee is purchasing an insurance policy, the premium payment is not taxable by State law.

The rental of personal property with an operator is considered a service subject to the sales tax that may qualify under service-related exemptions.

## Financing Lease

The term financing lease typically involves the lease of property for a stated period of time with ownership transferring to the "lessee" at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of a sale. A financing lease will be treated as a retail sale between the buyer and seller at the inception of the lease if the following conditions are met:

- 1) The lease term is equal to 75% or more of the estimated economic life of the property and there is no provision for returning the property to the lessor.
- 2) The residual value of the lease property is less than 10% of the property's fair market value.
- 3) The property is transferred to the lessee at the end of the lease at a nominal price.

If the transaction is determined to be a "retail sale" rather than a lease, the appropriate sales tax must be collected on the full selling price at the inception of the lease. For the purposes of this transaction, a sale takes place between the seller (vendor, manufacturer, etc.) and the buyer (lessee) with the leasing company acting essentially as a lender.

There is no provision for resale of rentals. Therefore, real or personal property that is sublet is subject to the sales tax each time it is rented or leased.

There is no provision for a "cap" on the tax for real or personal property rentals. Therefore, the tax is collected on the full amount of each lease payment.

## **Seller Defined**

*69.05.010 Every person making sales to a buyer or consumer, renting property or performing services for consideration.*

Person is defined in CBJ 01.15.010: “*Person* includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.”

Corporations are separate legal person, notwithstanding their affiliation with or relation to any other corporation or partnership or proprietorship through stock ownership by the same group of individuals.

Registration Requirements – not definition of a seller:

Each corporation shall register and file a separate sales tax return. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of inter-company transactions from the sales tax.

Joint ventures must register as such with the City and keep a set of accounting records separating the activities of the joint venture from the individual parties to the joint ventures. Sales transactions between the individual parties of the joint venture and the joint venture are subject to the sales tax under the provisions of 69.05.

A seller includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax . . . whether or not the . . . property is ever sold at retail." In other words, a retailer does not need to be in the actual business of making retail sales but merely in the business of selling property that would be a retail sale if sold at retail.

Pursuant to a business license:

Sellers representing themselves to be in the business of making such retail sales rentals or services

## **Selling Price**

*69.05.010 Selling Price and price means the consideration, whether money, credit, rights, or other property, expressed in terms of money, paid, given or delivered by a buyer to a seller, all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued, and without any deduction on account of losses.*

As a general rule, the method of payment has no effect on whether a sale is subject to sales tax. Credit sales, installment sales, lay-away sales, conditional sales, and sales involving trade-ins or other exchanges of property are no less taxable than are sales for cash.

The **sales price** subject to sales tax is the net amount paid after any discounts have been deducted. The seller must add the sales tax to the selling price and separately state the tax on all sales invoices.

A **discount** given by the retailer reduces the selling price and is not taxable. Sales tax is due on the discounted selling price.

**Quantity discounts** are offered to urge customers to buy larger quantities. These discounts may increase with the size of the order. Quantity discounts reduce the price of the items purchased and are not taxable. Sales tax is due on the discounted selling price.

**Cash discounts** are granted to credit customers as an incentive to pay early. These discounts are commonly referred to as **2/10, net 30**—a two percent discount may be subtracted from the bill if paid within ten days; otherwise the full amount is due within 30 days. Tax is calculated on the discounted selling price if the discount is taken.

**Manufacturer's Coupons** for which a merchant is reimbursed by a third party are not discounts. The amount subject to sales tax is the sales price of the item, before deducting the value of the coupon.

**In-Store Coupon** issued by the retailer for which no reimbursement is received is considered a discount. The taxable amount is the net amount paid for the item after deducting the value of the in-store coupon.

**Gratuities.** A gratuity is defined as something given voluntarily or beyond obligation. Gratuities may sometimes be referred to as tips.

- a. When a gratuity is given directly to employees by the purchaser in the form of cash or the purchaser adds a non-solicited gratuity to his bill, charge card voucher form, or house account form, no sales tax applies to the gratuity.

b. When an amount is added to a customer's bill by the retailer and the customer is advised **in writing** on the face of the bill that he may decline to pay all or part of the amount, that amount is a gratuity. Sales tax will not apply to the gratuity.

c. When an amount is added to a customer's bill by the retailer, and the customer is **not advised in writing** on the face of the bill that he may decline to pay all or part of the amount, it is not a gratuity and the fee so added is subject to the sales tax.

d. When a gratuity is negotiated **before the sale**, such as in the case of a banquet, tax must be charged on the entire fee so negotiated. Because of the negotiation, the fee loses its identity as a gratuity and becomes a service charge and part of the purchase price of the meal.

**Service Charges.** Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, must be included in the purchase price subject to tax, even though such service charges are made in lieu of tips and paid over by the retailer to his employees.

**Trade-in.** A trade-in allows a purchaser an exchange price, i.e., a reduced price quoted in the expectation that the purchaser will trade in, or exchange a used article of the same type. In such case the selling price subject to the tax is the exchange price plus the value of the article exchanged.

**Gift Certificates.** The period in which the sales tax liability arises depends on your basis of accounting. In general, the sales tax liability arises upon redemption of the gift certificate or upon expiration of the right to use the certificate.

### **Finance Charges, Carrying Charges, Interest**

Finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price are not considered a part of the selling price of such property subject to the retail sales tax, if

- (1) the amount of such finance charges, carrying charges, service charges or interest is in addition to the usual or established cash selling price, and
- (2) is segregated on the taxpayers accounts, and
- (3) billed separately to customers.

Amounts added to the base price, or agreed selling price on the failure of the buyer to make any payment at the time specified in the agreement between the parties--amounts generally designated as penalties--are not a part of the selling price and are not subject to the retail sales tax.

## **Advances and Reimbursements**

The word advance means money or credits received by a merchant from a customer or client so that the merchant may pay costs or fees for the customer or client.

The word reimbursement means money or credits received from a customer or client to repay the merchant for money or credits expended by the merchant in payment of costs or fees for the client.

The words advance and reimbursement apply only when the customer or client alone is liable for the payment of the fees or costs and when the merchant making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.

There may be excluded from the measure of tax amounts representing money or credit received by a merchant as reimbursement of an advance in accordance with the regular and usual custom of his business or profession.

It does not apply to cases where the customer, guest or client makes advances to the merchant for services to be rendered by the merchant or for goods to be purchased by the merchant in carrying on the business in which the merchant engages.

No charge that represents an advance payment on the purchase price of an article or a cost of doing or obtaining business, even though such charge is made as a separate item, will be construed as an advance or reimbursement. Money so received constitutes a part of selling price subject to the sales tax.