



City of
Golden

FINANCE DEPARTMENT
SALES TAX DIVISION

911 10TH ST
GOLDEN, CO 80401
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**ADMINISTRATIVE DIRECTIVE REGARDING INTERPRETATION OF THE
GOLDEN SALES AND USE TAX CODE REGARDING TAXABILITY OF
NAPKINS, CONDIMENTS, PLASTIC UTENSILS AND OTHER FOOD SERVICE
ITEMS AVAILABLE FOR PUBLIC USE**

With respect to napkins, condiments, plastic utensils and other food service items available for public use, the following shall be utilized to determine whether such sale or use is taxable under Chapter 3.03 of the Golden Municipal Code:

DEFINITIONS:

The following definitions and taxability apply;

Napkins – paper or linen cloth provided to protect clothing and clean-up spills and / or food. These items are subject to sales tax at the time of purchase or use tax if sales tax was not collected at the time of purchase on the cost of these items, if these items are available for public use or consumption without a purchase. Example: A napkin dispenser is placed in a public area and the public has the ability to take and use as many napkins as needed. No purchase is required in order to use these items. These items are provided as a free courtesy or service.

Condiments – salt, pepper, ketchup, mustard, relish and other spices and flavorings added to food by the customer. These items can be in single serving packets or bulk containers. These items are subject to sales tax at the time of purchase or use tax if sales tax was not collected at the time of purchase on the cost of these items, if these items are available for public use or consumption without a purchase. Example: A condiment dispenser is placed in a public area and the public has the ability to take and use the condiments as needed. No purchase is required in order to use these items. These items are provided as a free courtesy or value added service.

Plastic Utensils – plastic forks, knives, spoons, chop sticks and other items used to move or cut food. These items are subject to sales tax at the time of purchase or use tax if sales tax was not collected at the time of purchase on the cost of these items, if these items are available for public use or consumption without a purchase. Example: Plastic utensils placed in a public area and the public has the ability to take and use as many utensils as needed. No purchase is required in order to use these items. These items are provided as a free courtesy or service.

Other Food Service Items – includes miscellaneous items such coffee stir sticks, sugar, coffee creamer, coasters, hot coffee cup sleeves, cups for water, etc. These items are subject to sales tax at the time of purchase or use tax if sales tax was not collected at the time of purchase on the cost of these items, if these items are available for public use or consumption without a



ADMINISTRATIVE DIRECTIVE (continued)

purchase. Example: Coffee creamer and sugar packets are placed in a public area and the public has the ability to take and use as many creamers and sugar packets as needed. No purchase is required in order to use these items. These items are provided as a free courtesy or service.

Exempt Items Not Subject to Tax – Section 3.03.040 (a) of the Golden Municipal Code states the following is not subject to sales or use tax;

(14) Sales of tangible personal property to a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity:

(D) With regard to the sale of tangible personal property sold to a person engaged in the business of manufacturing or compounding for sale, profit or use of food products, such tangible personal property is exempt from taxation under this section when:

(i) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

(ii) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold skin casing, or other material, is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(15) Sales of tangible personal property for use as "exempt commercial packaging materials" as that term is defined herein.

Therefore items such as drink cups, lids, sandwich wrappers, and to-go food containers are not subject to tax if the following applies;

1. Items are accounted for as a Cost of Goods Sold or Inventory.
2. Items are not available to the general public without first being purchased as part of a food product.
3. Items qualifies as "exempt commercial packaging materials" as defined by Section 3.02.010 of the Golden Municipal Code (see below)



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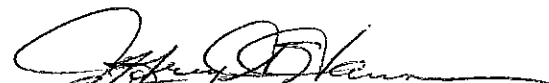
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ADMINISTRATIVE DIRECTIVE (continued)

1. "Exempt commercial packaging materials" means containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions: (1) is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product; (2) is transferred by said person along with and a part of the finished product to the purchaser; and (3) is not returnable to said person for reuse.

Dual Use Items – The City recognizes that some items can be used in both the production of food products which are exempt and may also be available for general public consumption without an actual purchase which is taxable. An example would be mustard or ketchup purchases which may become part of a sandwich or hamburger or may be self serve condiments located on the individual tables. In cases, where it is impossible to differentiate between items used in food production, and those provided as a value added service, the taxpayer may use a reasonable allocation or percentage to account for taxable and non-taxable items. The logic behind this allocation should be clearly documented in writing and made available in case of an audit. Unreasonable allocations may be disallowed if not properly documented or justified.


Jeffrey A. Hansen - Finance Director

Approved this 28th day of November, 2007

