

Tax and Licensing Division
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Tax Compliance Guide

Leased & Rented Property

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THIS GUIDANCE IS A SUMMARY IN LAYMEN'S TERMS OF THE RELEVANT AURORA TAX LAW FOR THIS TOPIC, INDUSTRY, OR BUSINESS SEGMENT. IT IS PROVIDED FOR THE CONVENIENCE OF TAXPAYERS AND IS NOT BINDING UPON THE CITY. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE AURORA MUNICIPAL CODE AND APPLICABLE RULES AND REGULATIONS. THIS GUIDE DOES NOT CONSTITUTE A CITY TAX POLICY.

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The *Aurora Municipal Code* definition of "purchase or sale" includes the following: "A lease, lease-purchase agreement, rental, or grant of a license, including royalty agreements, to use tangible personal property or taxable services." These terms include both operating and financing leases, installment sales, "rent-to-own" agreements, and credit sales. Retailers leasing or renting tangible personal property for use in the City ("lessors") must obtain an Aurora Sales & Use Tax License and collect sales tax on the lease payments. A lessee who does not pay Aurora sales tax at the time of the lease or rental must remit use tax to the City.

Aurora tax should be assessed on the lease payments for the entire term of the lease if the taxable event (delivery or pick up) occurred in Aurora. If the lessor shall cause the leased item to be delivered into another jurisdiction, that jurisdiction's sales tax would be assessed for the entire term of the lease.

The full amount of the lease and rental payments is taxable; including, but not limited to: delivery charges, interest charges, operator charges that are not separately stated, setup charges, service charges, environmental fees, damage waivers, fuel charges, and all other amounts paid to obtain the uninterrupted use of the leased property.

Aurora sales/use tax does not have to be paid by licensed lessors when purchasing inventory to be rented or leased if the property will be held strictly for customer use. The lessor must pay Aurora sales/use tax on property it uses in addition to being held for lease (mixed use property). Lessors may not avoid the collection of Aurora sales tax by paying sales/use tax upon the purchase of lease inventory unless it qualifies as a short-term on premises rental of tangible personal property such as a self-service car wash or laundromat.

Financing and Sales-Type Leases, Lease-Purchases Agreements, and Installment Sales

When property is sold under a financing/sales-type lease, lease-purchase agreement, installment sale, or other conditional sales contract, whereby the seller retains title as security for all or part of the price, or whereby the seller takes a chattel mortgage on such property to secure all or part of the price, the full amount of sales tax is due in the period in which the sale was made or upon the first instance of use, storage, consumption, or distribution in the City thereafter. No refund, credit, or bad debt deduction shall be allowed to either party in the case of default or repossession.

Aurora may authorize businesses operating wholly or partly on a credit accounting basis to file returns on an actual cash received basis or to collect the entire amount of tax due at the time of the sale without regard if title passed to the purchaser. Provided, however, that in any event, the entire tax due on a purchase or lease made on a revolving charge account shall be due and payable immediately.

In determining whether a lease is a financing/sales-type lease or operating lease, the City will generally follow how the transaction is accounted for by the lessor/lessee. The City may also try to ascertain the intent of the parties by reviewing agreements between the lessor and lessee, and by evaluating the facts and circumstances surrounding the transaction. Factors that may indicate that a lease is a financing/sales-type lease include the following:

- ❖ The lease transfers ownership of the underlying asset to the lessee by the end of the lease term.
- ❖ The lease grants the lessee an option to purchase the underlying asset that the lessee is reasonably certain to exercise.
- ❖ The lease term is for the major part of the remaining economic life of the underlying asset (usually 75%). However, if the commencement date falls at or near the end of the economic life of the underlying asset, this criterion should not be used for the purposes of classifying the lease.
- ❖ Consideration representing substantially all of the underlying asset's fair value is transferred to the lessor, based on the present value of all lease payments and the lessee's guarantee of residual value of the underlying asset, if any.
- ❖ The underlying asset is of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term.

Short-Term on Premises Rentals of Tangible Personal Property

When tangible personal property is rented for use on the retailer's premises, it is not subject to Aurora sales tax if the following conditions exist:

- ❖ The tangible personal property is required to be used by the customer on the retailer's premises; and
- ❖ The retailer has made an election to pay city sales/use tax on the purchase of the equipment being rented and has paid the applicable sales/use tax.

If a retailer elects not to pay sales tax or use tax to qualify for the exemption, the retailer must collect Aurora sales tax from each customer each time the tangible personal property is rented.

Once a retailer has made an election, the retailer must continue collecting Aurora tax based on the election made. If the retailer fails to make an election and does not pay city sales/use tax on the purchase, it shall be deemed as an election to collect the Aurora sales tax from each customer on each rental.

Examples

1. Resident A is building a fence for their yard and rents a nail gun and compressor from Equipment Rental B, a licensed Aurora retailer. Equipment Rental B charges \$100.00 per day for the rental plus a \$10.00 damage waiver. Equipment Renter B must collect Aurora sales tax on both the \$100.00 rental charge and the \$10.00 damage waiver.
2. Business C owns a growing Aurora software company and needs new computer server for their office. The IT vendor builds the server and leases it to Business C, the agreement qualifies as a financing or sales-type lease. The cost of the server is \$5,000.00. The lease term is 24 months with monthly lease payments of \$229.00. As a financing or sales-type lease, the lessor must collect sales tax up front on the sum of the lease payments in the amount of \$5,496.00.
3. Apartment Complex D rents washers and dryers to its tenants; each building has a laundry room with 10 washing machines and dryers. Washing machines cost \$.75 per load and dryer machines cost is \$1.00 per load. Apartment Complex D did not make an election to pay sales/use tax on the purchase of the washing machines and dryers and did not pay sales/use tax on the purchase of the equipment. Apartment Complex D must pay Aurora sales tax on the total revenue generated from the rental of the tangible personal property.

Related Topics

Bad Debts
Certificate of Taxes Due
Construction Equipment
Wholesales Sales

Citations

Aurora Municipal Code
§ 130-31. Definitions
§ 130-33. Legislative Intent
§ 130-156. Taxable Items
§ 130-157.5 Short Term on Premises Rental of Tangible Personal Property.
§ 130-160. Responsibility for payment
§ 130-161. Schedule of Taxes
§ 130-166 Credit Sales and Leases
§ 130-196. Levy
§ 130-199. Use tax credit

Contact Us

For additional assistance, please contact us:

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