

The Louisville Municipal Code (LMC) imposes a use tax upon the privilege of using, storing, distributing or otherwise consuming in the City any article of tangible personal property or services purchased, leased or rented from sources outside the City, on which a sales tax has not been paid.

### **Taxability of Samples, Demonstration Units and Displays**

Tangible personal property used by a retailer, wholesaler, or salesperson to sample, demonstrate, or display goods available for sale is subject to City tax, unless the goods will be resold in an unaltered state and basically unused to the ultimate consumer. The basis of the use tax is the purchase price paid for the sample, display or demonstration unit. No reduction in the tax is permitted on account of the length of time the sample units are used, the amount of consumption, or tax collected on the future sale of the units. The City use tax owed is calculated on the full purchase price the retailer or wholesaler paid to the supplier or manufacturer. When a sample unit is fabricated by the user, use tax is based on the cost of the materials only.

The intent of the purchaser to resell sample, display or demonstration units does not necessarily qualify the units for exemption from use tax, even if the units are carried as "inventory" on the purchaser's books. Taxation is the rule and exemption the rare exception. The purchaser must show clearly that the primary purpose of the purchase is for resale in an unaltered condition and basically unused by the purchaser.

For a sample, display or demonstration unit to be exempt and subject to resale, the retailer or wholesaler cannot make any use, other than incidental use of the item prior to resale. When a retailer or wholesaler's use of items from inventory is more than incidental, then the use becomes a taxable transaction which is separate and distinct from the retailer's subsequent taxable retail sale of the item to the end customer.

The City may consider several facts in determining the primary purpose of a unit of tangible personal property. Primary purpose considerations include:

The nature of the retailer's contractual obligations, if any, to use, alter or consume the property to produce goods or perform services;

The degree to which the items in question are essential to the retailer's performance of those obligations;

The degree to which the retailer controls the manner in which the items are used, altered or consumed prior to their transfer to third parties;

The degree to which the form, character or composition of the items when transferred to third parties differs from the form, character or composition of those items at the time they were initially purchased;

The details of the sale/purchase transaction between the seller and buyer including the purchase price and delivery terms;

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The treatment of the inventory for federal income tax purposes and whether or not items are capitalized and depreciated

In general, retailer's who place product on display while also holding the same out for sale, have only incidentally used the product and are not liable for use tax. For example, a bookstore that withdraws a book from inventory for the purpose of display, and for which the same book is also for sale, does not create a use tax liability. However, a retailer that withdraws a unit from inventory by which a customer may order or purchase a similar unit or which unit is sold at a reduced price, is subject to Louisville use tax.

### **Related Definitions**

A "wholesaler" means a person selling to retailers, merchants, jobbers, dealers or other wholesalers for the purpose of resale and not for storage, use, consumption or distribution.

"Storage or Storing" means any keeping or retention of, or exercise of dominion or control over, or possession for any length of time, of tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or outside the City from any person or vendor.

A "retail sale" means all sales except wholesale sales and includes lease, rental, barter or grant of license to use tangible personal property or taxable services as specified in Chapter 3.20 of the LMC by the ultimate user or consumer.

"Consumer" means any individual person, or persons engaged in business in the City that uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

"Purchase or Sale" means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed and includes the transfer, either conditionally or absolutely, of title or possession or both to tangible personal property; and the lease, lease-purchase agreement, rental or grant of a license, including royalty agreements to use tangible personal property, other taxable products, or taxable services.

### **Examples**

1. Louisville Manufacturer A sends out demos of its product to trade shows. The demos used for marketing purposes are subject to use tax to the manufacturer on the cost of the materials used to manufacture the demo unit. Any subsequent sale of the demo unit (at a standard or reduced purchase price) is a separate transaction and subject to sales tax.
2. Louisville Retailer B operates a furniture store in the City and has a warehouse and a showroom. The retailer uses furniture, rugs, lighting, wood and fabric samples and other decorative accessories in its showroom. Customers

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view the floor samples, sit on the furniture, and if they like an item, may purchase the same item from stock or, may select the desired wood or fabric they want and place a custom order.

The floor stock, rugs, lighting, wood and fabric samples are all subject to City use tax to the retailer. If some of the floor samples are eventually sold, either at the full retail price or a reduced price, the transaction is subject to sales tax.

3. Louisville Manufacturer C operates a food manufacturing business in the City. The manufacturer will periodically display new product in area grocery stores. The display requires the use of a custom refrigerated case which the manufacturer provides free of charge to the grocery store. If the manufacturer is providing the food to the grocery store free of charge, then the manufacturer must pay use tax to the City on the cost of the food provided. If sales tax was not paid by the food manufacturer on the price of the refrigerated display case, then use tax is due to the City on the purchase price.
4. Louisville Retailer D operates a second-hand store and regularly buys and sells used items. The items purchased for sale are displayed in the owners shop and are for sale “as is,” “where is”. Even though the items are “used”, they are being sold in an unaltered condition subsequent to the store’s acquisition. These items are not subject to use tax to the retailer, but the retailer must charge sales tax on the purchase price paid by the buyer even though the used item may have been taxed previously by prior owners.
5. Louisville Retailer E operates an electronics store in the City. To entice customers to purchase goods, the retailer uses some of its inventory as demonstrator units on its sales floor. The retailer does not adjust their inventory value on their books as they intend to resell the items. The units are connected to a power source and are available for potential customers to view and test during store hours.

Because Retailer E is using these units for marketing and demonstration purposes, they must pay Louisville use tax on their wholesale purchase price of the units. Should any of the demonstrator units be subsequently sold, the retailer must charge City sales tax on the purchase price paid by the customer.

6. Louisville Retailer F is a liquor store operating in the City. On the weekends, the retailer offers a “tasting” of wines it carries in the store and provides cheese and crackers to prospective customers. The wine is taken from inventory and the cheese and crackers are purchased from a local grocer. The retailer must pay use tax to the City on the cost of the wine used or discarded during the tasting. If sales tax was not paid by the retailer when purchasing the cheese and crackers, then use tax would be due on those items as well.

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