Regulation 39-26-501(3).

Definitions - "State fiscal year" means every twelve month period commencing 12:00 a.m., July 1 of one calendar year and ending 11:59 p.m., June 30 of the following calendar year. The fiscal year is designated as the fiscal year number of the June 30 year. Thus June 30, 1999, is the last day of the 1999 fiscal year, and June 30, 2000, is the last day of the 2000 fiscal year.

Regulation 39-26-502 SALES AND USE TAX REFUND FOR POLLUTION CONTROL EQUIPMENT.

(1) The refund of state sales and use tax pursuant to section 39-26-502, C.R.S. is available in any given tax year only if state revenues exceed the limitation on state fiscal year spending by the amounts established in section 39-26-502(6). Each October of each year, the state will certify if there are excess revenues in the immediately preceding fiscal year. See regulation 39-22-120 for years in which the refund is available.

(2) Identification of Purchase Within the Refund Period – Election of Method.

This refund program does not apply to any purchases made prior to July 1, 1999. Only purchases made in a qualifying state fiscal year qualify for refund. The first qualifying state fiscal year begins July 1, 1999 and ends June 30, 2000. There may be future fiscal years which do not qualify for the refund, surrounded by fiscal years that do qualify for the refund. This requires taxpayers to use a consistent method from year to year to define sales, purchase, storage, use or consumption (collectively referred to herein as the "purchase") to which the refund applies. The taxpayer is responsible to keep and maintain the records necessary to document all the refund claimed, including documentation to show that the appropriate optional method was used. Taxpayers who make no specific elections must use method (I). Taxpayers may use one of the methods below, or any combination of the three within the limitations of each method. The taxpayer may elect option (II), but must continue this method for three fiscal years or until after a non-refund eligible fiscal year has passed. For any fiscal year, taxpayers may use option (III) for a major project(s) or in any case where eligibility certification may not be issued until the project is complete.

- (i) INVOICE DATE METHOD. The primary indicator of whether the purchase qualifies as being within the fiscal year shall be the invoice date. For example, qualifying invoices dated on or after July 1, 1999 but before July 1, 2000 are eligible for the refund claim filed on or after January 1, 2001 but before April 2, 2001. The invoice date method will not include any purchase in a year for an invoice that is merely the acceptance of an order and where the actual shipping date is within a later fiscal year.
- (ii) DELIVERY DATE OF GOODS METHOD. The taxpayer may elect this method for all purchases over a dollar amount threshold set by the taxpayer. This dollar amount must be announced by the taxpayer with the first refund claim filed using this method. The taxpayer electing this method must continue this election, with the same amount used as the threshold, for three fiscal years or until after a non-refund eligible fiscal year has passed. Where the delivery date method is elected the taxpayer must document delivery

receipt dates for all qualifying purchases greater than the dollar amount selected. Where method (III) is also used, the taxpayer must document the separation of purchases claimed as contract or certification qualified purchases under method (III). If documentation of delivery date is not maintained for qualifying invoices above the threshold amount, this method will be denied and the invoice date method imposed. (iii) COMPLETED CONTRACT/CAPITALIZATION METHOD. This method may be used where the taxpayer is awaiting certification under the terms of section 501 of this section, or where the taxpayer otherwise elects this method for a project with complete centralized records. All qualifying goods, regardless of invoice or delivery date will be considered "purchases" on the later of the date of project completion or date of capitalization and depreciation start up. Thus goods may be brought on site in a year of which the exemption exists, but may be disqualified from refund if the completion year is in a state fiscal year (as defined above) that is disqualified from refund.

- a. Capital projects commenced prior to July 1, 1999 are excluded from this method, and must be claimed on an invoice date or delivery date method.
- (iv) OTHER METHODS. Other methods may be allowed, where authorized prior to filing the first refund claim using such methods, where the taxpayer assumes complete burden of providing proof as required by the terms of the proposed method and where accepted by the delegate of the Executive Director.
- (3) **Refund Form.** Refunds shall be filed on the Claim for Refund, Form 4137 and contain all the information required by that form. The refund period is the July 1 through June 30 fiscal year for which a qualified surplus exists. Claims may not be filed before the following January 1, and may not be filed after the following April 1. If April 1 falls on a Saturday, Sunday or holiday, the following business day shall be the last day for filing a claim. No extension of the filing period deadline of April 1 is provided in the statute so no extension will be granted. Claims filed after April 1 of the filing year will be denied in full. Claim for an earlier fiscal year purchase may not be made with a claim filed in future years, except under the completed project method in paragraph (2)(iii) above. See section 39-21-119, C.R.S. for filing rules. Refund claims should isolate the state sales or use tax component of any tax paid on purchases from other sales tax amounts of other taxing jurisdictions.
- (4) Refund Claim Documentation. Qualifying as Pollution Control Equipment. Identify amounts claimed by project, as appropriate to the particular claim:
- (i) If one project is the subject a claim, provide certification or description of the project or equipment purpose and use. Identify which part of section 39-26-501 C.R.S. is applicable to qualify the equipment as exempt pollution control equipment.
- (ii) For refund claims with more than one qualifying pollution control project, provide the description of pollution control projects, description of each major components function as a pollution control device. Identify by project which part of section 39-26-501 C.R.S.

is applicable to qualify the project as exempt pollution control equipment. This information may be provided by assigning an alphanumeric code for each category of pollution control, a translation key for the code, and use of the code on invoices or on each entry of a spreadsheet.

(5) Refund Claim Documentation. Verification of equipment and tax paid.

- (i) For refund claims under \$500 or with under 20 invoices, attach copies of the invoices and indicate qualification type on invoices or explanation sheet. If consumer use tax was paid, indicate the account number and month of remittance.
- (ii) For claims over \$500 and with more than twenty purchase invoices, provide on paper a columnar worksheets or print outs with each line listing an equipment item and the invoice or delivery date, vendor name, project or type of asset, item price subject to sales or use tax, total sales tax paid, total state sales tax paid and total state use tax paid.

(iii) Where appropriate:

- o Provide copies of the ten largest invoices and all invoices that reflect a state sales tax paid of more than \$5,000.
- Provide Colorado account number under which use tax was paid, if applicable.
- o For all equipment purchases within one fiscal year a single vendor has collected more than \$1,000 of Colorado sales tax for which a refund is claimed, provide a listing of the vendor name, address for IRS W-9 purposes and Internal Revenue Service Taxpayer Identification Number (TIN) assigned to that taxpayer.
- o Provide the relevant portion of the business chart of accounts
- (6) Pollution Control Equipment Refund Subject to Audit. Refunds issued under this part shall be subject to audit review by the agents of the Executive Director. When a refund of tax is issued, there has been no state sales or use tax paid on that purchase. If a refund amount is determined to be invalid the sales tax or use tax will be assessed as an unpaid tax liability any time within the statutory assessment period as applicable under section 39-21-107 or other statutes as may apply. Penalties, interest and officer liability shall apply from the date of refund, exactly as to other unpaid sales or use taxes. Refunds may also be reclaimed under section 13-80-101(1)(m), C.R.S.