Colorado Department of Revenue

2012 Sales/Use Tax Law - Part I

Taxpayer Service Division

Introduction

Class Time
Breaks
Food and Beverage
Restrooms
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Questions
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Businesses in Attendance

Agenda

- Terms
- Sales Tax Collection
- Licenses
- Tax-Exempt Documents
- Use Tax
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Terms

- Jurisdiction - physical taxing territory on a map. The four taxing jurisdictions in Colorado are state, county, city and special district.
- State-Collected/Statutory - city, county or special district where the Colorado Department of Revenue collects the sales tax.
- Home-Rule City - city collects its own tax and has its own codes/rules.
- Special District - special taxing area (For example, RTD/CD/LID/RTA).
- Service Fee/Vendor Fee - a discount taken on a timely filed and paid sales tax returns. Cannot be applied to sales transactions.

Collecting Sales Tax

Who Pays/Collects Sales Tax?

Point of Taxation

Examples

Who Pays Sales Tax?

- When tangible personal property (TPP) is sold to an end user, sales tax should be collected by the seller.
- What is tangible personal property? Anything you can touch - exception real property (land) and certain services such as utilities and telephone services.
- Who is the end user? When a transaction takes place and the purchaser has no intent of re-selling the item(s) purchased, the purchaser is considered the end user.

Who Collects Sales Tax?

- Colorado Department of Revenue (CDOR) collects taxes for more than 308 statutory cities, counties and special districts – 740 different jurisdictional combinations.
- The CDOR DOES NOT collect tax for HOME-RULE CITIES who collect their own taxes. Refer to publication "Colorado Sales/Use Tax Rates" (DR 1002) for a list of these cities.
- The CDOR collects sales taxes for all counties with a sales tax, except Denver and Broomfield.

Point of Taxation

- Point of Delivery/possession is point of taxation. The destination is regarded as the point of sale and sales tax is collected for the taxing jurisdictions that the seller and buyer share in common.
  - Example: Retailer in Arapahoe county who delivers goods to buyer in Jefferson county does not collect sales taxes for Arapahoe county (sale doesn't occur in Arapahoe county) or Jefferson county (sale occurs there but no there is no nexus.) However, retailer should open a Retailer's Use Tax Account and collect the RTD/CD taxes because sale and retailer's nexus are in the RTD/CD.

- Local taxes – Collect when:
  - (1) sale occurs in local jurisdiction <u>and</u>
  - (2) retailer has business presence (nexus) in that local jurisdiction.
  - Sale occurs where/when delivery made to end user.
  - Retailer has nexus if it has business presence (e.g., a store).

Sales Tax Nexus

- Nexus is the actual physical location or substantial presence within the State of Colorado, even if the business is home-based in another state. Nexus determines whether or not a company has to register and comply with Colorado sales tax law.
- To establish substantial nexus for sales tax would require a retailer or manufacturer to have an office, store, warehouse, or other place of business, representative or an agent selling within Colorado.
- If retailer's <u>only</u> presence is by mailing catalog, advertising media, or Internet sales, then retailer does not have nexus. Refer to examples in the following slides for more details.

Nexus Creating Activities

- Obvious
  - —Buildings, property
  - —Employees

- Less Obvious
  - —Sub-contractors, agents
  - —Installation, training, maintenance
  - —Rented/leased property

Nexus Scenarios

Does the way the product is delivered affect the application of the local tax?

- A retailer does not create a business presence with the destination local tax jurisdiction if the retailer only occasionally enters into the destination jurisdiction to deliver its goods, regardless of whether the retailer used a common carrier or its own vehicles to make those deliveries.
- However, if the retailer has more than merely occasional deliveries into a destination local tax jurisdiction, it is important to determine whether the retailer used its own vehicles or common carrier.
- A retailer who uses its own vehicles to make frequent deliveries will create a business presence in the destination local tax jurisdiction, but not create a business presence when it uses a common carrier.
- A company that makes deliveries of Company's product on behalf of the Company is an agent of the Company and the other companies deliveries will be treated as if they were made in the Company's vehicles.
- Colorado Private Letter Ruling (PLR-11-006)

Nexus Scenarios cont.

- Equipment
  - Company leaves equipment at customer's locations for use by Company employees when they service the customer's vehicles at the customer's business location in a local taxing jurisdiction where Company has no physical presence.
  - Because the equipment is left at the customer's place of business, the repair work is significant not only in terms of frequency but in the level of service provided. Company's repair services, in and of itself, creates a business presence.
  - Colorado Private Letter Ruling (PLR-11-006)

Nexus Scenarios cont.

- Employees
  - Company sells products and services along with having employees stationed at Company's customer's business location in a local tax jurisdiction in which Company does not have any other physical presence. In this case, Company employees report daily to a single customer location for as long as the Company has a contract with the customer.
  - The sustained presence of Company employees in the destination tax jurisdiction creates a business presence for the Company in that jurisdiction. Therefore, the destination tax jurisdiction can require Company to collect its taxes. Because a sale occurs where the product is delivered to the customer, Company must collect the sales tax of the destination local jurisdiction.
  - Colorado Private Letter Ruling (PLR-11-006)

Sales Tax Collection – Example #1

Combined Sales Tax Rate

- Company is located in Castle Pines North, Colorado. If point of possession takes place at that location, the following sales taxes should be collected on those sales:

Colorado/State	2.9%
Scientific Cultural District	0.1%
Douglas County	1.0%
Castle Pines North	2.75%
Total	6.75%

- Note: The Lincoln Station Local Improvement District near Interstate 25 on Park Meadows Drive has a sales tax of .5%. The northeast portion of Douglas County, Highlands Ranch, the Park Meadows Mall area, Lone Tree, Acres Green, and Lincoln Station LID are located in the Regional Transportation District, which has a sales and use tax of 1.0%. The Scientific and Cultural Facilities District sales and use tax of .1% applies to all of Douglas County except in the towns of Castle Rock and Larkspur.

Sales Tax Collection – Example #2

Combined Sales Tax Rate

- Company is located in Denver. If point of possession takes place at that location, the following sales taxes should be collected on those sales:

Colorado/State	2.9%
Scientific Cultural District	0.1%
Regional Transportation District	1.0%
City/County of Denver	3.62%
Total	**7.62%**

Sales Tax Collection – Example #3

Combined Sales Tax Rate

- Company is located in Fort Collins. If point of possession takes place at that location, the following sales taxes should be collected on those sales:

Colorado/State	2.9%
Larimer County	0.6%
City of Fort Collins	3.85%
Total	**7.35%**

Sales Tax Collection – Example #4

Combined Sales Tax Rate

- Company is located in Colorado Springs. If point of possession takes place at that location, the following sales taxes should be collected on those sales:

Colorado/State	2.9%
El Paso County	1.0%
Pike Peak RTA	1.0%
City of Colorado Springs	2.5%
Total	**7.4%**

Delivery Example #1

- Seller is located in:
  - State of Colorado
  - El Paso County
  - City of Colorado Springs (home-rule city)
  - Pikes Peak RTA
- Purchaser is located in:
  - State of Colorado
  - Douglas County
  - Highlands Ranch
  - RTD/CD
- Taxes Collected:
  - State
- No sales tax should be collected for Colorado Springs, El Paso County or the RTA, as these are not common taxing jurisdictions.
- If the seller has a “nexus” in Highlands Ranch, the seller should collect State, Douglas County, and the RTD/CD sales taxes.
- If the seller doesn’t have a “nexus” in Highlands Ranch, but makes deliveries into Highlands Ranch, the seller should open a Retailer’s Use Tax Account and remit RTC/CD use tax on these sales.
- No city tax applies to sales in Highlands Ranch, as Highlands Ranch does not have a sales tax.

Delivery Example #2

- Seller is located in:
  - State of Colorado
  - City of Fort Collins (home-rule city)
  - Larimer County
- Purchaser is located in:
  - State of Colorado
  - City of Loveland (home-rule city)
  - Larimer County
- Taxes Collected:
  - State
  - Larimer County
- Since the item was delivered outside of Fort Collins, no Fort Collins sales tax should be collected. However, if seller collected Fort Collins sales tax in error, purchaser should get a credit for those taxes and contact the city of Loveland to find out if use tax is due.

Delivery Example #3

- Seller is located in:
  - State of Colorado
  - Garfield County
  - City of Glenwood Springs (home-rule city)
- Purchaser is located in:
  - State of Colorado
  - Garfield County
  - City of New Castle (home-rule city)
  - RTA
- Taxes Collected:
  - State
- Since the item was delivered outside of Glenwood Springs, no Glenwood Springs sales tax should be collected.
- If the seller has a “nexus” in the City of New Castle, the seller should collect State, Garfield County, City of New Castle and the RTA sales taxes.
- If the seller doesn’t have a “nexus” in the RTA, but makes deliveries into the district, the seller should open a Retailer’s Use Tax Account and remit RTA use tax on these sales.

Internet Sales

- For Colorado businesses, the sales of goods through the Internet are treated the same as the sale of tangible personal property through traditional selling methods such as selling via a store front with delivery options.
- If you are in Colorado and purchase goods over the Internet, you will owe sales tax on the purchase if buying from a seller that is licensed to collect Colorado sales tax.
- If you are buying from a seller not licensed to collect Colorado sales tax, you will not generally pay sales tax to the vendor. However, you will pay state 2.9% use tax and any applicable local taxes such as special district taxes RTD/CD.
- Use tax is paid on form DR 0252, “Consumer Use Tax Return.”
- FYI Sales 79, “Sales of Taxable Items Over the Internet”

State-Issued Licenses

FYI Sales 9
“Sales Tax Licenses and Filing Requirements”

Sales Tax License Application

- To establish a state sales tax account and obtain a state sales tax license:
  - Apply online with Colorado Business Express: www.Colorado.gov/cbe
  - Complete form CR 0100, “Sales Tax/Withholding Account Application” which can be downloaded from our Web site, www.TaxColorado.com
  - If applying in person at a Taxpayer Service Division Service Center:
    1. Valid proof of identification is required at the time of application.
    2. Valid proof includes: a Colorado Driver’s License, Colorado ID Card, U.S. Passport, Resident Alien Card (including eligibility for employment), U.S. Naturalization papers and/or Military ID Card.
    3. Payment for license fees can be made by check or money order only. No cash or credit cards can be used.

Standard Retail License

- A person or business having a permanent location where retail sales are conducted on a regular basis must obtain a standard sales tax license. [§39-26-103, C.R.S.]
- The fee for a two-year license is $16 and prorated in $4 increments every 6 months. There is a one-time deposit of $50.
- Under Colorado law the deposit is only refundable to the extent the business remits sales tax. For example, if a retail business collects and remits $30 in state sales tax, the Department will then refund only $30.
- Standard sales tax licenses must be renewed every two years.
- If you have more than one permanent sales location, each location must have a license.
- Allow four to six weeks to receive a license in the mail. If you apply for a license in person at one of the Taxpayer Service Centers, a license number will be issued immediately. The actual license will then be sent to you within two weeks.

Wholesale License

- Wholesalers must obtain a standard sales tax license and pay the $16 license fee, but are not required to pay the $50 deposit. [§39-26-103 (8), C.R.S.]
- A wholesaler is a person or business doing a regularly organized wholesale or jobbing business, is known to the trade as such, and sells only to retail merchants, jobbers, dealers, or other wholesalers for the purpose of resale.
- Businesses registered as wholesalers will receive one return in December with which to remit any taxes collected during the year on limited retail sales.

Charitable Organizations - License

- **Charitable organizations** which hold IRS section 501(c)(3) qualification letters and have a Colorado exemption certificate **may be exempt from collecting sales tax during fund raising events**.
- If the charitable organization conducts sales for a total of 12 days or less during a calendar year **and** the net proceeds from all these events do not exceed $25,000 in that calendar year, the sales are not subject to sales tax. [Net proceeds is total gross events receipt(s) less expenses attributable to the event(s).]
- If sales are conducted more than 12 days in a calendar year, all sales are subject to taxes. For example, if the charitable organization chooses to conduct sales on a thirteenth day during the calendar year, the entire amount of gross sales from all 13 days is subject to sales tax.
- However, if a charitable organization makes more than $25,000 in net proceeds during a calendar year, sales tax applies to net sales that exceed this amount but not to the first $25,000 in net proceeds.

Charitable Organizations cont.

- Charitable organizations should contact their local governments to find out if a similar exemption for local taxes is allowed.
- If the local jurisdiction is a state-collected tax jurisdiction that does not allow the exemption, the charitable organization should obtain a Colorado standard sales tax license so that the organization can report and pay local tax to the department.
- If there's a question about whether the organization's net proceeds will exceed $25,000 in a calendar year, tax should be collected on all sales and the organization should obtain a Colorado sales tax license.
- The license fee for charitable groups is $8 every two years.
- The $50 sales tax license deposit is not required.

Other Tax-Exempt Agencies

- Government organizations and schools operating a retail business, such as a thrift store or snack bar, **must** obtain a standard sales tax license and collect and remit sales taxes.
- Government agencies may obtain the license free of charge.
- The $50 sales tax deposit is not required.
- Government agencies, (such as libraries), and schools which hold a fund raising event where items will be sold at retail **must** obtain a sales tax license and must collect all applicable state and local sales taxes.
- If the agency holds only one fund raising sale, it should obtain a single event license; however, if a sale is held on a **regular basis**, e.g., once each week or month, a standard sales tax license is required.

Home-Based Business

- Some home-based crafts persons or artists and many other kinds of small home business operators are not required to obtain a state sales tax license if:
  1. Make occasional or isolated sales of tangible personal property from home, AND
  2. Total sales are no more than $1,000 per year.

- If not licensed, sales tax collected is submitted on form DR 0100-A.

- The sales tax license exemption does not apply to you if you or any member of your household are engaged in a trade or business outside the home where items sold are similar to those sold within your home.

- FYI Sales 8, “Sales Tax Requirements for Small Home Businesses.”

Seasonal Sales

- If your business is seasonal and you make retail sales during only part of each year, you must obtain a standard sales tax license. [Reg. 39-26-109]
- Examples of seasonal businesses are ski rental shops, fireworks and Christmas tree stands, and other businesses which are in operation during only certain months of the year.
- The Department will send you returns only for those months during which you do business.
- The return is due on the 20th of the month following the reporting month.
- If your seasonal business is conducted in several locations, you must have a separate license for each location.

Farmer's Markets

- Persons engaged exclusively in the business of selling commodities exempt from state sales tax are not required to get a sales tax license, so farmers selling food commodities at a farmer's market do not have to get a state sales tax license [§ 39-26-103(6) C.R.S.]
- If a retailer sells prepared food or other tangible property, he/she should get a standard sales tax license.
- If the location of the market is in a local jurisdiction that does not exempt food for home consumption, the retailer should collect and pay the local tax either via his/her own account or through the account of the market organizer if he/she is not required to have a license.
- If the market organizer is only collecting applicable local sales tax, he/she can request to not pay the $50 deposit [§ 39-26-103(9)(c) C.R.S.]

Event Sales Tax Licenses

Single Event Sales Tax License

- A single event sales tax license is required when an individual, organization or vendor plans to conduct or participate in a retail sales event at a location other than the regular business operation at which there are three or more vendors.
- The single event license is valid **only** for sales made during the single event.
- The fee is $8, but this license is free to vendors who already have a standard sales tax license. A license is required regardless of the anticipated amount of sales.

Multiple Events Sales Tax License

- Persons engaged in selling at retail at more than one special event in any two-year period at which there are three or more vendors have the option of obtaining a multiple events license rather than obtaining a single event license for each event. Multiple events licensees may participate in any number of events at various locations (other than their regular business location) during the covered two-year period.
- The fee is $16 for a two-year period, but is prorated in increments of six months if the license is purchased after June 30 of any year.
- There is no fee for this license to vendors who already have a standard sales tax license.

Event Sales Tax Licenses cont.

- The organizer of a sales event which includes three or more vendors may obtain an event license.
- If the organizer obtains the license for the event, then the vendors need not obtain licenses individually.
- In that case, however, the organizer is required to remit all taxes collected by the vendors who do not have a license for the event and also for vendors who have a license but who elect to have the organizer remit the tax.
- Special Event Application (DR 0589).
- File separate sales tax return (DR 0098) due the 20th of the month following the start date of the event.

Events – Revenue Online

- If an event is listed in Revenue Online, you may submit the return and payment. Be sure to remit both return and payment by the 20th of the month following the start date of the event to avoid penalties/interest.

- Go to: www.Colorado.gov/RevenueOnline
  - Click on “Business”
  - Then “File a Return”
  - Then “File Special Event Sales Tax”
  - Click on your event to file/pay

Food Service License

- If the business is a restaurant or other food service establishment, the new business owner should contact the county health department where the business is located for registration requirements.
- Restaurants, food establishments and food vendors must obtain a sales tax license through the Colorado Department of Revenue by filing form CR 0100, “Sales Tax/Wage Withholding Account Application.”
- Food service licenses are issued and renewed by the county health departments.
- If a retail food establishment closes, the taxpayer should notify both the department and the local health agency when the business closes.
- FYI Sales 24, “Eating and Drinking Establishments.”

Filing Frequency

- How often you are required to file a sales tax return (monthly, quarterly or annually) depends on your sales volume.
- If you anticipate taxable sales of $10,000 or more per month you must register to file your Retail Sales Tax Return (DR 0100) monthly; if you anticipate sales less than $10,000 per month, you may file quarterly.
- If, after a year of operation, your business collects $15 or less per month in sales tax, you may request to file your return annually.
- Monthly returns are due by the 20th of the month following the reporting month. For example, the June return is due July 20. Quarterly returns are due the 20th of the month following the reporting quarter. Annual returns are due January 20.
- If a due date falls on a Saturday, Sunday or holiday, the return is due on the next business day.

Tax-Exempt Documents

Purchases for Resale
Tax-Exempt Certificates
Construction Projects

Resale Purchases

- Before accepting a sales tax license for a tax-free purchase:
  - Verify the license by using Revenue Online, www.Colorado.gov/RevenueOnline
  - Determine if purchaser is in the business of reselling items purchased (for example, an artist purchasing office supplies to resell might be questionable.)

Tax-Exempt Certificate

- For non-profit, charitable, school, religious or government organizations (FYI Sales 2).
- Issued by the DOR only for Colorado exempt organizations who qualify.
- This exemption does not apply to locally-collected sales tax levied by home-rule cities.
- Verify validity online via Revenue Online www.Colorado.gov/RevenueOnline
- No fee.
- Authorizes organizations to make tax-free purchases of TPP and services when items are to be used in the conduct of the organization's regular charitable function.

Exempt Certificate - Construction

- Used for purchasing construction and building materials for exempt projects (for example, schools, charitable organizations, government.)
- Issued only to the General Contractor for each exempt project. Application (DR 0172.)
- No fee.
- Sub-contractors must obtain a copy of the certificate from the General Contractor.

Colorado Use Tax

What is Use Tax?
Use Tax Rates
Examples
FYI General 10, “Consumer Use Tax”

What is consumer use tax?

- A use tax may be imposed to prevent someone from evading a sales tax by buying goods in a non-taxing state and shipping them into the state that imposes the sales tax.

- States and municipalities impose use taxes on purchases/rentals that are made outside the taxing jurisdiction but would have been taxable had they taken place within it. Such transactions escape the normal sales tax collection because retailers outside the state or municipality are not required to collect the sales tax unless there is an established nexus (business presence).

- The use tax protects retailers located in the state or municipality because it removes the incentive for consumers to shop outside that locality in order to avoid paying the sales tax.

Colorado Law Requirement

- Consumer use tax is owed when the article purchased is used or available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which control of the article is assumed by the purchaser. [§39-26-202, C.R.S.]
- Colorado law requires that state sales or use tax be paid on all non-exempt tangible personal property that is sold, leased, or delivered in Colorado for use, storage, distribution or consumption in the state.
- The buyer does not have the option of paying use tax to the taxing authority instead of paying sales tax to the seller when the seller possesses (or is required to possess) a Colorado sales tax license.

Use Tax Rates

- State use tax rate = 2.9%

- RTD = 1%
- CD = 0.1%
- RTA = Rates vary (Refer to publication DR 1002 for details.)

- State-collected cities and counties may impose a use tax only upon motor vehicles, and upon building materials and supplies used in construction projects within their jurisdictional boundaries. Those state-collected cities and counties in Colorado that have use tax on motor vehicles and building materials will collect their own use tax when building permits are issued or when vehicles are registered.

- State-collected local jurisdiction examples:
  - Dillon – No use tax
  - Estes Park – Use tax on motor vehicles only (2%)
  - Morrison – Use tax on motor vehicles/building materials (3%)

Use Tax Example #1

- Your business is located in Brush (Morgan County)
- You purchase and pick up a desk from a seller located in unincorporated Jefferson County for your business location in Brush.
- Sales tax paid to seller: State, RTD/CD, County)
- No use tax is due. Sales tax was paid for State and there is no use tax on these items in the state-collected local city and county jurisdictions.

Use Tax Example #2

- Your business is located in Aurora (Arapahoe County)
- You purchase a computer in Westminster (Jefferson County) and have it delivered to Aurora.
- Seller collects: State, and RTD/CD sales taxes since they are the common taxing jurisdictions between the buyer and seller.
- However, you are located in a home-rule city and may owe use tax that's paid directly to Aurora. Aurora should be contacted for details.
- In addition, the seller should contact Aurora since it is a home-rule city, those cities should be contacted to find out if a nexus has been established and city sales tax should be collected.

Use Tax Example #3

- Your business is located in Colorado Springs (El Paso County)
- You purchase and pick up a computer in Monument (El Paso County) **not** subject to the Baptist Road RTA.
- Seller collects the following sales taxes: State, Monument and El Paso County. Point of possession is in Monument.
- No use tax is due for the State or El Paso County. Note: You paid 3% sales tax to the city of Monument. However, Colorado Springs is a home-rule city and will need to be contacted directly to find out if additional use tax is due.
- In addition, your business is located within the boundaries of the Pikes Peak RTA. 1% use tax for the RTA is due.

How do Businesses Pay the Tax?

- If your total use tax owed is less than $300 per year, the return is filed on an annual basis, due on January 20 of the following year. If total tax owed exceeds $300 at the end of any month, the return is due by the 20th of the following month.
- File and pay online via Revenue Online, www.Colorado.gov/RevenueOnline. The online system has built-in tax rates for the location of your business or residence address. The system calculates the amount of tax owed based on the purchase total and will help you avoid errors. You can pay your tax online too.
- If filing by paper, the state and RTD/CD use taxes are filed using the DR 0252, "Consumer Use Tax Return".
- The Rural Transportation Authority uses tax is filed using form DR 0251 "RTA Consumer Use Tax Return".
- For more information about state and special district taxes please see the DR 1002, Sales and Use Tax Rates.

Resources

CDOR Contacts
Tax Classes
Revenue Online
Home-Rule Cities

CDOR Contacts

Colorado Department of Revenue

- www.TaxColorado.com
  - Forms, FYI publications, Online Customer Support, Statutes & Regulations, Links to other government agencies, Tax Index, Tax Alerts
- Call Center, M-F, 8:00 a.m. - 4:30 p.m.
  - 303-238-7378 (SERV) - General Information
- Walk-in Service Centers (Visit our Web site for days and hours of operation)
  - Denver (1375 Sherman Street - 14th & Sherman)
  - Colorado Springs, Fort Collins, Grand Junction, Pueblo

Secure Email Messages

- **Need to communicate with us about your tax account?**
- **Send a secure message through Revenue Online, www.Colorado.gov/RevenueOnline.**
  - If you have set up a Login ID and Password to access your Colorado tax account through Revenue Online, you have the option to send questions to department staff.
  - The messages you send to and from the Department of Revenue are secure -- you must access your Revenue Online account to send messages and view responses from the department.

Tax Classes

Free Tax Classes – Department of Revenue

1. Sales/Use Tax Part I – Content online and CPE credit is available.
2. Sales/Use Tax Part II – Content online and CPE credit is available.
3. Wage Withholding – Content online and CPE credit is available.
4. Contractor/Manufacturing – Content online and CPE credit is available.
5. Hospitality – Content online and CPE credit is available.
6. Printing/Advertising – Content online.
7. Use Tax – Content online and CPE credit is available.
8. Non-Profit/Tax-Exempt Class – Content online.
9. Tax Update Classes – Content online and CPE credit is available.

Home-Rule Cities

- Contacts listed on pages 5 - 6 of the DR 1002
- Can also be located via: www.Colorado/gov/RevenueOnline
  - Business Link
  - View Local Sales Tax Rates
  - Home-rule City Links
- Note: Home-rule city link will take you to the municipal government page where you can link directly to their Web site. Many home-rule cities conduct sales/use tax classes and will need to be contacted directly for details.

Questions?

Thank you for attending
and
best of luck in your business!