



## Sales Tax Division *Tax Compliance Guide*

### ***RENTAL OF PORTABLE TOILETS***

Contractors, businesses and events need additional restroom facilities. As such, other businesses provide, under oral or written contracts, portable toilets to such contractors, businesses and events. The necessary servicing of the toilet will also be provided as part of the contract and this typically consists of regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper. At the customer's request, additional servicing of the toilet will also be provided for an additional fee.

From time to time it is necessary to determine if the transaction is a sale or rental of tangible personal property or the furnishing of a service. In considering the "true object" test, the "true object" of the transaction is the portable toilet and not the servicing of the toilet regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper. Such servicing is incidental to the rental of the portable toilets. Businesses temporarily providing portable toilets to others for a fee are renting tangible personal property since such constitutes the transfer of tangible personal property for a consideration.

The providing of portable toilets is considered the lease or rental of tangible personal property since the property provided is a required and necessary element of the contract or agreement between the business and its customer. Additionally, the possession or control of the portable toilet is transferred to the customer.

A charge by a business for temporarily providing portable toilets to another person constitutes a rental of tangible personal property subject to the Town of Breckenridge sales tax since such is the transfer of tangible personal property for a consideration, regardless of whether sales or use tax was paid at the time of purchase.

#### **MAINTENANCE / CLEANING SERVICES**

Charges for mandatory maintenance or cleaning services of portable toilet units are subject to tax as part of the rental price. Charges for optional maintenance or cleaning services of portable toilet units are not part of the rental price of the portable toilet units and are not subject to tax.

Maintenance or cleaning services are mandatory within the meaning of this regulation when the lessee, as a condition of the lease or rental agreement, is required to purchase the maintenance or cleaning service from the lessor. Maintenance or cleaning services are optional within the meaning of this regulation when the lessee is not required to purchase the maintenance or cleaning service from the lessor. Charges for maintenance or cleaning services will be considered mandatory and therefore part of the taxable rental price, unless the lessor provides documentary evidence establishing that such charges are optional. The terms of the lease or rental agreement determine whether the maintenance or service charges are mandatory or optional. In the absence of a lease or rental agreement, or in the absence of language in the lease or rental agreement specifying whether the maintenance or service charges are mandatory or optional, an invoice stating that the maintenance or cleaning charges are optional, and separately stating these charges from the rental charge, will be sufficient to support the exemption from tax.

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When the maintenance or cleaning services are subject to tax, the supplies used to perform these services are considered to be sold with the services and may be purchased for resale. When the maintenance or cleaning services are not subject to tax, the provider of these services is the consumer of the supplies, and tax generally applies to the sale to or the use of these supplies by the provider of the maintenance or cleaning services.

### **EXAMPLES**

1. Barbara is organizing a special event in Town. She has rented from Potties-A-Go-Go in order to provide toilets on the day of the event. No contract is provided, only an invoice after the completion. The transaction is a rental of tangible personal property and the entire amount is taxable.
2. Dan's Construction Company contracts with Andrew's Portable Toilets in order to provide toilets at their construction site. The contract provided specifies that the units will be emptied and cleaned one time per week. Additionally, Dan may call to request additional cleanings as he sees fit, at a charge of \$50 / unit. The mandatory cleanings are taxable along with the toilet rentals. Any additional cleanings that Dan requests are a service and are not taxable.
3. John's Silver Mine requires the installation of portable toilets at the mine. They purchase the toilets from Tinkle-Sheds Inc. They also need the toilets to be serviced on a regular basis and contract this service through Tinkle-Sheds Inc. The purchase of the toilets is taxable. The contracting of the maintenance service is not taxable.

### **RELATED TOPICS**

**Intermingled Sales and Service**

**Mandatory Service Charges**

**Service Enterprises**

Breckenridge Town Code

3-1-1 leases of tangible personal property

3-1-2 definition of "gross sales" and "purchase or sale"

3-1-3(A) purchase price paid for rentals of tangible personal property

THE ABOVE INFORMATION IS A SUMMARY IN LAYMEN'S TERMS OF RELEVANT BRECKENRIDGE TAX LAW FOR THIS TOPIC, INDUSTRY, OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE BRECKENRIDGE TOWN CODE AND APPLICABLE RULES AND REGULATIONS. THIS GUIDE DOES NOT CONSTITUTE A TOWN TAX POLICY.

9/25/2012