

Business Tax Administrative Rule 500.19-4A (LIC-5.06)

Clean Energy Surcharge (CES) – Retail Sale

A taxfiler's retail sale is a sale to a consumer for the consumer's use or consumption, and not for resale. A taxfiler's nonretail sale (i.e. – not a retail sale) is a sale to a consumer that is intended for resale by the consumer. Whether a sale is a retail sale or a nonretail sale depends upon the consumer's use of that item.

A consumer (your customer) can be a business, an individual, a governmental unit, or any other person or entity. The terms "consumer" and "customer" are interchangeable.

Example 1

Business A sells packaging material to its customer, business B. B resells the packaging materials to its customers. This is not a retail sale for A.

Example 2

Business C sells packaging material to its customer, business D. D uses the packaging material to contain the product it sells to its customers. This is a retail sale for C.

Example 3

Business E sells packaging material to its customer, business F.

- F uses some packaging material in its business. These are retail sales for E.
- F also resells some of the packaging materials to its customers. These are not retail sales for business E.

All business activity generating income from the sale, rental, lease, or use of goods, services, or intangibles are considered Retail Sales unless the good or service is being sold for resale by another entity. Unless expressly excluded by code, administrative rule, or written policy all business activity is subject to CES.

If a Large Retailer honors the City's resale certificate criteria, the City will consider the following to be for resale and therefore exempt from Retail Sales:

- Where a good is manufactured or purchased by one business and then resold to a second business as new merchandise or combined with other components and resold to a second business as a constituent component of another new manufactured good
- Where a service is resold in the same manner as goods
- Where goods and services are resold together in the same manner as either a sale of stand-alone goods or services

To be excluded from Retail Sales, the taxpayer must have reasonable certainty that the good or service will be resold by the purchaser and not consumed or used by the purchaser. A resale certificate* would generally be sufficient to document these sales, but they are not required. However, there must be documentation or other reasonable support to exclude the item from Retail Sales. The Revenue Division will provide additional guidance through written policy and/or forms to clarify these requirements.

*Elements of an acceptable resale certificate would include, but are not limited to, the following: Name and address of the purchasing business, a description of the item(s) being purchased for resale, and the name and title of the person signing for the purchasing business. The certificate should be signed and dated by the purchaser and include a certification by the purchaser that the item(s) are being purchased for resale in the purchaser's regular course of business.

XX-XX-2024

Date

Director, Revenue Division

Adopted: 09-10-2019

Amended: XX-XX-2024