

Business Tax Administrative Rule 500.19-4

Clean Energy Surcharge (CES) – Retail Sale

All business activity is either goods-producing or service-providing, both of which are considered Retail Sales unless the good or service is being sold for resale by another entity. Unless CES or this rule expressly excludes a specific type of sale, all goods-producing or service-providing 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 resales 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.

*An acceptable resale certificate would include 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.

EXAMPLES

Sales to retailers and wholesalers of tangible personal property that will be resold in the regular course of business as 'new' merchandise to the end user or consumer

Example 1

Company A sells new clothing to a customer at a location in Portland for the customer's use or consumption. These are Retail Sales.

Example 2

Company B buys clothing from Manufacturer A and sells that clothing to Company A to sell at Company A's retail location in Portland. Manufacturer A obtains resale certificate documentation from Company B at the time of sale. Company B obtains resale certificate documentation from Company A at the time of sale. Neither Manufacturer A nor Company B's sales are Retail Sales.

Example 3

Company C is a petroleum products manufacturing company and sells gasoline to Independent Retail Gas Station Operator A. Company C obtains resale certificate documentation from Independent Retail Gas Station Operator A at the time of sale. Company C's sales are not Retail Sales.

Example 4

Company D is a petroleum products manufacturing company and sells gasoline from a company-owned retail gas station. These are Retail Sales.

Sales of ingredients or components to manufacturers that are used by the manufacturers to create a new product for sale

Example 1

Company E is a bicycle manufacturer in Portland. Company F sells tires to Company E. Company E installs these tires on bicycles and sells these bicycles to the general public for their use or consumption. Company F obtains resale certificate documentation at the time of sale from Company E. Company F's sales are not Retail Sales.

Example 2

Company F has a separate line of business selling tires directly to the general public for their use or consumption. These are Retail Sales.

Example 3

Company G is a computer manufacturer and sells computers to Company H. Company H uses these computers in product design and administration. Company H's use of these computers does not incorporate them as ingredients or components in a product ultimately resold to a final consumer for use or consumption. In this case, Company H is the final consumer. Company G's sales to Company H are Retail Sales.

Example 4

Company I provides contract assembly line services to Company G that Company G uses in its computer manufacturing process. This manufacturing process produces tangible personal property. There is no direct relationship between the contract labor provided and the production of computers. Company G's use of these contract services does not incorporate them as ingredients or components in a product ultimately resold to a final consumer for use or consumption. In this case, Company G is the final consumer. Company I's sales to Company G are Retail Sales.

Example 5

Company J sells supplies, equipment, or machinery to Company G that Company G uses in its computer manufacturing process. Company G's use of these supplies, equipment, or machinery does not incorporate them as ingredients or components in a product ultimately resold to a final consumer for use or consumption. In this case, Company G is the final consumer. Company J's sales to Company G are Retail Sales.

Example 6

Company K is a restaurant. Company L sells edible ingredients to Company K that Company K uses to create prepared food for sale to Company K's customers for their use or consumption. Company L obtains resale certificate documentation from Company K at the time of sale. Company L's sales to Company K are not Retail Sales.

Example 7

Company M sells napkins, utensils, straws, and other non-edible items to Company K. Company K's use of these non-edible items does not incorporate them as ingredients used to create prepared food for sale. Non-edible items, even if transferred to the customer as part of the sales transaction, are considered incidental to the sale of prepared food. Company K is the ultimate consumer of non-edible items. Company M's sales to Company K are Retail Sales.

Example 8

Company N is a plastics manufacturer that purchases petroleum products from Company O. Company N uses these petroleum products as component materials in its manufacturing process. These petroleum products lose their identities as separate components and become part of finished products sold to final consumers for their use or consumption. Company O obtains resale certificate documentation from Company N at the time of sale. Company O's sales to Company N are not Retail Sales.

Example 9

Company P is an industrial fuels supplier that sells propane, diesel, and gases to Company N. Company N uses these fuel sources to power its plastic production machinery. Company N's use of these fuel sources does not incorporate them as ingredients or components in Company N's products. These fuels are not ultimately resold to a final consumer for use or consumption. Company N is the final consumer. Company P's sales to Company N are Retail Sales.

Sales of materials and contract labor for retail and wholesale construction

Example 1

Company Q is a steel fabricator and sells girders to Company R, a construction contractor, as part of a real property building construction project in Portland. Company R is the prime contractor and includes the cost of the girders in the total contracted amount to Company R's customer, Company S. Company Q obtains resale certificate documentation from Company R at the time of sale. Company Q's sales to Company R are not Retail Sales.

Example 2

Company T is a subcontractor that operates the cranes that lift the girders into place for Company R's real property building construction project in Portland. Company R's use of these crane operation services is directly related to the construction of real property for Company R's customer, Company S. This direct relationship incorporates these services as ingredients or components in a real property product ultimately resold to a final consumer for use or consumption. Company T obtains resale certificate documentation from Company R at the time of sale. Company T's sales to Company R are not Retail Sales.

Example 3

Company S, the land owner, pays Company R the full contract price for the real property building construction project. Company S is the final consumer. The contract amount paid from Company S to Company R is a Retail Sale.

Sales of services by certain 'non-construction' subcontractors to a prime contractor

Example 1

Company U is a computer programming company working on a large capital IT project for a Portland customer, Company W. Company U is the prime contractor and hires Company V as a subcontractor. Company V is also a computer programming company and provides substantially the same services as Company U when they are both working on the project. Company V obtains resale certificate documentation from Company U at the time of sale. Company V's sales to Company U are not Retail Sales.

Example 2

Company W pays Company U the full contract price for the large capital IT project. The contract amount paid from Company W to Company U is a Retail Sale.

Example 3

Company X is a computer software company. Company X sells canned software to Company U for Company U's use or consumption on the project for Company W. Company U is the final consumer of this computer software. Company X's sale to Company U is a Retail Sale.

Sales of intangible property sold in their existing form

Example 1

Company Y sells canned (as-is) computer software applications to Company Z. Company Z sells this same software to the general public without making any material changes. Company Y obtains resale certificate documentation from Company Z. Company Y's sales to Company Z are not Retail Sales.

Example 2

Company AA is a stock brokerage. Company AA buys and sells securities for customers in the ordinary course of business. Company AA often rebuys and resells the same securities. Company AA's sales of securities are not Retail Sales.

Example 3

Company AA earns commissions on its security buying and selling activities. These commissions are Retail Sales.

CES excludes the following types of sales from taxation, regardless of whether sold at wholesale or retail:

- Qualified Medicine or Drugs (See Administrative Rule 500.19-2.)

Example 1

Company BB sells prescription blood pressure medication and other Qualified Medicine or Drugs to a consumer for the consumer's use or consumption. These sales are not subject to CES.

Example 2

Company CC sells medical products that do not qualify as Qualified Medicine or Drugs to a consumer for the consumer's use or consumption. These sales are subject to CES.

- Qualified Health Care Services (See Administrative Rule 500.19-3.)

Example 1

Company DD is a hospital that provides only emergency, surgical, consultative, and other Qualified Health Care services to patients for the patients' use or consumption. These sales are not subject to CES.

Example 2

Company EE is a hospital that provides the same services as Company DD. However, Company EE also provides management services to hospitals, clinics, and physicians. These services assist Company EE's customers with business administration tasks and are not Qualified Health Care Services. These sales are subject to CES.

- Qualified Groceries

Example 1

Company FF sells breads and cereals; fruits and vegetables; meats, fish, and poultry; dairy products; and other Qualified Groceries. These sales are not subject to CES.

Example 2

Company GG sells beer, wine, liquor, cigarettes or tobacco, pet foods, soaps, paper products, household supplies, prepared food intended for immediate consumption, and other items that are not Qualified Groceries. These sales are subject to CES.

The following are not considered to be Retail Sales:

- Incidental sales of real property outside the normal course of business

Example 1

Company HH is a clothing retailer that owns many buildings in Portland. Company HH does not sell real property in the ordinary course of business. Company HH sells one of its buildings. The sale of Company HH's building is not a Retail Sale.

Example 2

Company II is a homebuilder and builds and sells homes in Portland in the ordinary course of business. Company II's sales of homes to its customers are Retail Sales.

- Incidental investment income outside the normal course of business

Example 1

Company JJ is a furniture retailer in Portland. Company JJ earns interest on its business bank accounts. This investment income is not a Retail Sale.

Example 2

Company KK is in the business of lending money to customers and earning interest income from these loans. Interest earnings on Company KK's loans to its customers are Retail Sales.

- Other incidental income generated outside the normal course of business

Example 1

Company LL recognizes taxable income from the forgiveness of debt. This forgiven debt is not a Retail Sale.

COMPREHENSIVE EXAMPLE

Diversified Sales Business (DSB) is a large, publicly-traded corporation with the following lines of business:

- Tangible personal property sold for final use or consumption (including Qualified Groceries and Medicine)
- Tangible personal property sold to other businesses for resale as-is (also including Qualified Groceries and Medicine)

DSB has \$1B in total gross income in Portland and \$3B in total gross income everywhere (as reported on lines 18a and 18b, respectively, of its Combined Tax Return). DSB's gross income is made up of the following:

	Portland	Everywhere
Total Gross Income (line 18a and 18b)	\$1 B	\$3 B
Sold for Resale		
Qualified Groceries and Medicine	\$100 M	\$300 M
Other	\$200 M	\$700 M
Total – 'Non-Retail' Sales	\$300 M	\$1 B
Sold for Final Use/Consumption		
Qualified Groceries and Medicine	\$200 M	\$500 M
Other	\$500 M	\$1.5 B
Total – Retail Sales	\$700 M	\$2 B

Filing Requirement

DSB, with \$1B in Portland and \$3B everywhere, has greater than \$500K gross income in Portland and greater than \$1B in total gross income everywhere. DSB meets the Filing Requirement defined in CES and must file a CES Schedule with the Revenue Division to determine if it is liable for CES.

Large Retailer Determination

DSB can only remove the 'Sold for Resale' items in determining whether it is a Large Retailer. DSB must include all 'Sold for Final Use/Consumption' items, including the \$200 M (Portland) and \$500 M (Everywhere) qualified items. DSB, with \$700 M in Portland Retail Sales and \$2 B in everywhere Retail Sales, is considered a Large Retailer for purposes of CES. However, DSB would only calculate CES on the taxable Retail Sales in Portland.

CES Calculation

DSB would remove the \$200 M in Qualified Groceries and Medicine from the \$700 M 'Sold for Final Use/Consumption' total to determine the amount of Retail Sales that would be subject to CES (Retail Gross Revenue). In other words, the CES would be 1% of \$500 M, or \$5 M. (For simplicity, this example assumes that the City Business License Tax attributable to CES taxable sales is zero.)