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## CHAPTER 3.04

### Retail Sales And Use Tax

#### *I. General; Tax Imposed*

#### **3.04.005 Name of Chapter.**

This Chapter shall be known as, and cited as, the "Colorado Municipal Model Sales and Use Tax Ordinance." Effective March 31, 1992, at 11:59 p.m., Sections 3.04.005 through 3.04.535 of this Code are repealed in their entirety. (Ord. 1052 §1, 1992)

#### **3.04.010 Legislative intent.**

This Municipal Model Sales Tax Code is intended to standardize municipal sales and use tax practices for the convenience of taxpayers, the business community and home rule municipalities while retaining the essential flexibility which home rule municipalities enjoy pursuant to Article XX of the Colorado Constitution. This Code shall become effective April 1, 1992, at 12:01 a.m. (Ord 1052 §2, 1992)

#### **3.04.015 Words and phrases defined.**

The following words and phrases as used in this Chapter shall have the following meaning:

(1) *Access services* means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

(2) *Auction* means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

(3) *Automotive vehicle* means any vehicle or device in, upon or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

(4) *Business* means all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect.

(5) *Charitable organization* means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment) or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in or intervene in (including the

publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

(6) *City* means the City of La Junta.

(7) *Construction materials* means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or other items which do not remain as an integral or inseparable part of a completed structure or project are not construction materials.

(8) *Consumer means*: (a) any individual person; or (b) a person engaged in business in the City who uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

(9) *Drugs dispensed in accordance with a prescription* means drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced in writing by the pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

(10) *Engaged in business in the City* means performing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City.

a. *Engaged in business in the City* includes, but is not limited to, any one (1) of the following activities by a person:

1. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;

2. Sends one (1) or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products or for demonstration or other reason;

3. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;

4. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or

5. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

b. *Engaged in business in the City* includes, but is not limited to, any one (1) of the following activities by a corporation, limited liability company, limited liability partnership, partnership or other business entity:

1. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;

2. Sends one (1) or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products or for demonstration or other reason;

3. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;

4. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;

5. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period; or

6. Allows a principal shareholder, director or officer to use a business vehicle to transport said principal shareholder, director or officer to and from that person's place of residence within the City.

(11) *Exempt commercial packaging materials* means containers, labels and shipping cases by a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions: (a) is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product; (b) is transferred by said person along with and as a part of the finished product to the purchaser; and (c) is not returnable to said person for reuse.

(12) *Farm closeout sale* means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

(13) *Finance Director* means the Finance Director of the City or such other person designated by the municipality; Finance Director shall also include such person's designee.

(14) *Food* means: food for domestic home consumption as defined in 7 U.S.C. Section 2012(g) as amended, for purposes of the Federal Food Stamp Program as defined in 7 U.S.C. Section 2012(h), as amended, except that food does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow food; prepared salads and salad bars; cold sandwiches; deli trays; and food or drink vended by or through machines or noncoin-operated coin-collecting food and snack devices on behalf of a vendor.

(15) *Gross sales* means the total amount received in money, credit, property or other consideration valued in money for all sales, leases or rentals of tangible personal property or services.

(16) *License* means a City of La Junta sales and use tax license.

(17) *Linen services* means services involving provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

(18) *Lodging services* means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, auto camp or trailer court and park or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use or other agreement, or otherwise.

(19) *Medical supplies* means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose useable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids.

(20) *Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways and those motor vehicles which have been redesigned or modified by the mounting thereon for special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance and repair of roadways, the drilling of wells and the digging of ditches.

(21) *Newspaper* means a publication, printed on newsprint, intended for general circulation and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service or books or pocket editions of books.

(22) *Pay television* shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed.

(23) *Person* means any individual, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in the fiduciary or representative capacity, whether appointed by court or otherwise or any group or combination acting as a unit.

(24) *Preprinted newspaper supplements* shall mean inserts, attachments or supplements circulated in newspapers that: (a) are primarily devoted to advertising; and (b) the distribution, insertion or attachment of which is commonly paid for by the advertiser.

(25) *Prescription drugs for animals* means drugs dispensed in accordance with any order in writing, dated and signed by a practitioner or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

(26) *Price or purchase price* means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Chapter, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

a. Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or

b. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this State, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

d. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

e. Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.

f. Transportation and other charges to effect delivery of tangible personal property to the purchaser.

g. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

h. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all materials used, labor and service performed and the profit thereon.

*Price or purchase price* shall not include:

- a. Any sales or use tax imposed by the State or by any political subdivision thereof.
- b. The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out-of-state trade-in's are an allowable adjustment to the purchase price.
- c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

(27) *Private communications services* means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate intercommunications system for the subscriber's stations.

(28) *Prosthetic devices* means any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include but are not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

(29) *Purchase or sale* means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property and services acquired by:

- a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;
- b. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services, the utilization of coin-operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;
- c. Performance of taxable services; or
- d. Barter or exchange for other property or services including coupons.

The terms *purchase* and *sale* do not include:

- a. A division of partnership assets among the partners according to their interests in the partnership;
- b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

c. The transfer of assets of shareholders in the formation or dissolution of professional corporations;

d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

e. A transfer of a partnership interest;

f. The transfer in a reorganization qualifying under Section 368(a)(1) of the "Internal Revenue Code of 1954," as amended;

g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;

h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

i. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

j. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

k. The transfer of assets between the parent and closely held subsidiary corporations or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. To such an extent any transfer referred to in this paragraph shall constitute a sale. For the purposes of this paragraph, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

(30) *Recreation services* means all services relating to athletic or entertainment participation events, including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin-operated amusement devices, video games and video club memberships.

(31) Retail sales means all sales except wholesale sales.

(32) Retailer means any person selling, leasing or renting tangible personal property or services at retail. Retailer shall include any:

a. Auctioneer;

b. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; or

c. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

(33) Return means the sales and use tax reporting form used to report sales and use tax.

(34) Sales tax means the tax to be collected and remitted by a retailer on sales taxed under this Code.

(35) Security system services means electronic security system services. Such term does not include nonelectronic security services such as consulting or human or guard dog patrol services.

(36) Sound system services means sound system services involving provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

(37) Tangible personal property means corporeal personal property.

(38) Tax means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

(39) Tax deficiency means any amount of tax that is not reported or not paid on or before the due date.

(40) Taxable sales means gross sales less any exemptions and deductions specified in this Code.

(41) Taxable services means services subject to tax pursuant to this Code.

(42) Taxpayer means any person obligated to collect and/or pay tax under the terms of this Code.

(43) Telecommunications service means the transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. Telecommunications service includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. *Telecommunications service* does

not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

(44) *Therapeutic device* means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a *therapeutic device* for purposes of this Code.

(45) *Total tax liability* means the total of all tax, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

(46) *Use tax* means the tax to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

(47) *WATS/800 service* means any outbound or inbound interstate wide area telecommunications service or other similar service which entitles the subscriber, upon payment of a periodic charge, based upon a flat amount and/or usage, to make or receive a large volume of telephonic communications to or from persons having telephone or radio telephone stations in specified areas which are outside the telephone system area in which the subscriber's station is located.

(48) *Wholesale sales* means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.

(49) *Wholesaler* means any person selling to retailers, jobbers, dealers or other wholesalers, for resale and not for storage, use, consumption or distribution. (Ord. 1209 §§1—3, 1997; Ord. 1052 §3, 1992)

#### **3.04.020 Rate; imposition and collection; distribution.**

(a) Sales tax: There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 3.04.030(a). The rate levied shall be three percent (3%). Pursuant to the terms of a general election and bond issue in 1995, a tax increase of twenty-five hundredths of a percent (0.25%) shall be levied in addition to the rate otherwise set forth in this Section for all sales accruing from January 1, 1996 through December 31, 2015, inclusive.

(b) Use tax: There is hereby imposed and shall be collected from every person in the City a use tax for the privilege of storing, using, distributing or consuming in the City any articles of tangible personal property or taxable services purchased. The rate levied shall be three percent (3%). Pursuant to the terms of a general election and bond issue in 1995, a tax increase of twenty-five hundredths of a percent (0.25%) shall be levied in addition to the rate otherwise set forth in this Section for all sales accruing from January 1, 1996 through December 31, 2015, inclusive.

(c) Imposition and collection: The taxes specified in this Section are imposed upon the purchaser. Any seller engaged in business in the City shall collect the tax and remit it to the City pursuant to the schedule set forth in this Chapter.

(d) The tax imposed in this Section shall continue to be levied and collected until amended or repealed by ordinance.

(e) The tax imposed in this Code shall be in addition to all other taxes imposed by law. (Ord. 1141 §§1--4, 1995; Ord. 1052 §4, 1992)

**3.04.030 Transactions and items subject to tax.**

(a) The tax levied by Section 3.04.020(a) shall apply to the price of the following:

(1) Tangible personal property that is sold, leased or rented, whether or not such property has been included in a previous taxable transaction.

(2) Telecommunications services for all intrastate telecommunications service originating from or received on telecommunications equipment in the City if the charge for the service is billed in an apparatus, telephone or account in this City, to a customer location in this City, or to a person residing in the City without regard to where the bill for such services is actually received.

(3) Installation in the City of equipment required to receive or transmit telecommunications service.

(4) Gas, electricity, steam, coal, wood, fuel oil or coke furnished for domestic, commercial or industrial consumption.

(5) Pay, cable or subscription television, including charges for service, installation, connection or any similar charge.

(6) Lease or rental of service of operators of mobile machinery and self-propelled construction equipment.

(7) Security system and sound system services, whether purchased or leased.

(8) Warranty or maintenance services relating to tangible personal property, whether included in the cost of the tangible personal property relating thereto or sold separately.

(9) Modified computer software program services.

(10) Recreation services offered in the City.

(11) Lodging services.

(12) Coin-operated devices that dispense tangible personal property.

(b) The tax levied by Section 3.04.020(b) shall apply to the price of the following:

(1) Tangible personal property purchased for use without previous payment of the sales tax and used, stored or consumed inside the City either personally or in conjunction with the rendering of a service.

- (2) Tangible personal property purchased at wholesale or component parts purchased for manufacture which are subsequently used by the taxpayer, either personally or in the business.
- (3) Taxable services purchased without previous payment of the sales tax.
- (4) The cost of meals given without charge to employees or others.
- (5) Automobile vehicles required to be registered at an address inside the City on which a municipal sales tax has not been paid. The County Clerk of the county in which the registration occurs is authorized to collect such tax for the City prior to or at the time of registration.
  - a. The determination of vehicle registration requirements for individuals shall be the same as for the determination of residency for voter registration purposes.
  - b. For vehicles owned by nonresidents or for vehicles registered outside of the City limits, those vehicles shall be subject to the use tax provisions of this Chapter if said vehicle is engaged in business in the City, as defined in Section 3.04.015(10)a or b.
- (6) Construction or building materials which are used or consumed within the City and upon which a sales or use tax has not been paid. (Ord. 1209 §§3, 4, 1998; Ord. 1052 §6, 1992)

#### **3.04.035 Exemptions from sales tax.**

The tax levied by Section 3.04.020(a) shall not apply to the following:

- (1) Automotive vehicles sold to nonresidents of the City for registration outside the City.
- (2) Tangible personal property when the following conditions exist:
  - a. The sales are to individuals who reside or businesses which are located outside the City; and
  - b. The articles purchased are delivered to the purchaser outside the City by common carrier or by the conveyance of the seller or by mail, and such articles delivered are used outside the City.
- (3) The sale and purchase of drugs for which a prescription is required and which are intended for human or animal use, prosthetic medical and dental appliances and special beds for patients with neuromuscular or similarly debilitating ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry or podiatry; corrective eyeglasses (including eyeglass frames) and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient, hearing aids, hearing aid batteries, insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin reactions; and human whole blood, plasma, blood products and derivatives. This exemption excludes items purchased for use by medical and dental practitioners

or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

(4) Cigarettes.

(5) All direct sales to charitable organizations in the conduct of their regular charitable functions and activities, when billed to and paid for by the charitable organizations.

(6) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by charitable organizations in the conduct of their regular charitable functions and activities.

(7) All direct sales to the United States Government, the State, its departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.

(8) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by the United States Government, the State, its departments and institutions or the political subdivisions thereof, in their governmental capacities only.

(9) All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the Constitution of the State.

(10) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction and building materials shall, at the time of such actual use, be subject to the tax imposed by Section 3.04.020(b) of this Article.

(11) All commodities which are taxed under the provisions of Section 39-27-201(8) et seq., C.R.S., and all commodities which are taxed under such provisions and for which the tax is refunded and the sale of special fuel, as defined in Section 39-27-201(8), C.R.S., used for the operation of farm vehicles when such vehicles are being used on farms and ranches; aviation fuel used in turbo-propeller or jet engine aircraft shall not be exempt.

(12) Neat cattle, sheep, lambs, fish for stock purposes, swine, goats, mares and stallions for breeding purposes.

(13) Straw and other bedding for use in the care of livestock.

(14) All wholesale sales.

(15) Tangible personal property sold to a person engaged in manufacturing or processing for sale when the product being manufactured or processed is transformed in fact by the addition of the property, and such property becomes a constituent part of the finished product.

(16) Sales of tangible personal property for use as containers, labels and shipping cases to a person engaged in manufacturing or compounding for sale.

(17) Tangible personal property sold for rental or leasing inventory, including but not limited to coin-operated devices, provided that such property is not otherwise used except for customer demonstration or display.

(18) Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing, fabricating or other processing labor is never exempt.

(19) Construction materials, if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City, which evidences that a use tax on such materials has been paid or is required to be paid to the City or a municipality.

(20) Tangible personal property sold through coin-operated devices for a price of fifteen cents (\$.15) or less.

(21) The sale of food as defined in Section 2012(g) of Title 7 of the United States Code as of, and as it may be amended after, October 1, 1987, that is purchased by the medium of exchange commonly known as food stamps, and the sale of food as defined in or pursuant to Section 1786 of Title 42 of the United States Code as of, and as it may be amended after October 1, 1987, that is purchased with vouchers, checks or similar certificates of exchange for the "Special Supplemental Food Program for Women, Infants, and Children."

(22) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline.

(23) Purchasers of machinery or machine tools or parts thereof in excess of five hundred dollars (\$500.00) by a person engaged in manufacturing to be used in the City directly and exclusively by such person in manufacturing tangible personal property for sale or profit.

(24) All implements of husbandry and farm equipment as defined herein:

a. As used in this Section, *implement of husbandry* means every vehicle that is designed, adapted or used for agricultural purposes. It also includes equipment used solely for the application of liquid, gaseous and dry fertilizers. Transportation of fertilizer, in or on the equipment used for its application, shall be deemed a part of application if it is incidental to such application. It also includes hay balers, hay stacking equipment, combines, tillage and harvesting equipment, agricultural commodity handling equipment and other heavy movable farm equipment primarily used on farms or in a livestock production facility and not on the highways. Trailers specifically designed to move such equipment on highways shall, for the purposes of Part V of this Article, be considered as component parts of such implements of husbandry.

b. As used in this Section, *farm equipment* means farm tractors, as defined in Section 42-1-102(33), C.R.S., implements of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars

(\$1,000.00). *Farm equipment* also includes, regardless of purchase price, attachments and baling wire, binders twine and surface wrap used primarily and directly in any farm operation. On and after July 1, 2000, *farm equipment* also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment, all shipping pallets or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural application.

Tangible personal property and services taxable pursuant to this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., except as otherwise provided in this Section.

c. As used in this Section, *farm tractor* means every motor vehicle designed and used primarily as a farm implement for drawing plows and mowing machines and other implements of husbandry.

d. As used in this Section, *farm equipment* does not include:

1. Vehicle subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which they are used;

2. Machinery, equipment, materials and supplies used in a manner that is incidental to a farm operation;

3. Maintenance and janitorial equipment and supplies; and

4. Tangible personal property used in any activity other than agriculture, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research or transportation.

e. As used in this Section, a *farm operation* means the production of any of the following products for profit, including but not limited to a business that hires out to produce or harvest such products:

1. Agricultural, viticultural, fruit and vegetable products;

2. Livestock, as defined in Section 39-26-102(5.6). *Livestock* means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca and goats, regardless of use, and any other animal which is raised primarily for food, fiber or hide production, including alternative livestock (domesticated elk or fallow deer);

3. Milk;

4. Honey;

5. Poultry and eggs.

(25) Farm close-out sales.

- (26) Newspapers.
- (27) Newspaper advertising supplements.
- (28) Modular/manufactured home building permit.

a. Any person requesting a building permit within the City, for purposes of erecting a modular/manufactured home, shall provide the City engineering office and the City sales tax office with a receipt showing payment of all sales tax or use tax owed to the City on said modular home and/or manufactured home prior to the issuance of any building permit. It shall be an express condition precedent to the issuance of a building permit that all sales taxes or use taxes be paid to the City prior to the issuance of a building permit. The City Engineering Department shall be entitled to reject and deny any building permit should proof of payment of sales tax or use tax to the City be refused, or if the taxes remain unpaid.

b. Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S., shall be exempt from taxation under this part; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in Section 42-1-102(106)(b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of Section 39-26-113, shall be exempt from taxation under this part. (Ord. 1278 §§A, B, 2000; Ord. 1241 §§1, 2, 1999; Ord. 1126 §§1, 2, 7, 1994; Ord. 1052 §7, 1992)

#### **3.04.040 Exemptions from use tax.**

(a) The tax levied by Section 3.04.020(b) shall not apply to the following:

(1) Tangible personal property which is exempt from the sales tax pursuant to Section 3.04.020(a).

(2) The storage of construction materials purchased on or after January 1, 1986.

(3) Tangible personal property most recently sold on or after January 1, 1986, which is first used or consumed inside the City more than three (3) years after its most recent sale, if such property has been significantly used for the principal purpose for which it was purchased outside the City.

(4) Automotive vehicles if the owner is or was, at the time of purchase, a nonresident of the City who purchased the vehicle for use outside the City and if the vehicle was previously registered, titled and licensed outside the City.

(5) The storage of tangible personal property purchased from a nonresident vendor by a common carrier, public utility company or construction company which is a resident of the City or is doing business in the City, provided that such tangible personal property is stored but not used or consumed in the City.

(b) The list of exemptions shall not be increased by implication or similarity. (Ord. 1052 §8, 1992)

### **3.04.045 Exemption; burden of proof.**

(a) The burden of proving that any retailer is exempt from collection or paying sales tax shall be on the retailer under such reasonable requirements of proof as the Finance Director may prescribe.

(b) The burden of proving that any consumer is exempt from paying the use tax shall be on such consumer under such reasonable requirements of proof as the Finance Director may prescribe. (Ord. 1052 §9, 1992)

### **3.04.050 Deductions and credits.**

(a) Deductions from gross sales: If included in reported gross sales, the following are deductible from gross sales:

(1) Refunds: The price of tangible personal property or taxable services returned by a purchaser when the price and the sales tax collected are refunded in cash or by credit.

(2) Bad debts charged off: Taxable sales which are represented by accounts not secured by conditional sales contract, rental purchase contract or security interest and which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State; provided, however, that if such amounts are thereafter collected by the taxpayers, a tax shall be paid on the amount so collected.

(3) Interest and finance charges: The amount of interest or finance charges on credit extended in connection with any sale, if the interest or finance charges are separately stated from the price.

(b) Credits from total tax liability:

(1) Vendor's fee: A retailer's collection and remittance expense equal to three percent (3%) of the sum of the sales tax computed and any excess tax collected may be taken as a credit against sales tax paid on or before the due date. Such vendor's fee shall be forfeited for any sales tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Chapter.

(2) Amounts previously paid pursuant to a tax levied by a municipality may be credited against the tax due on transactions or items other than construction materials as follows:

a. When the present owner or user has previously paid a legally imposed sales or use tax on the transaction or item: except that the amount of such credit shall not exceed the amount of tax on such transaction or item computed at the rate established by Section 3.04.020.

b. When the present owner or user of construction equipment has not previously paid a legally imposed sales or use tax attributable to any one (1) municipality on the full price of such equipment, the credit shall be the aggregate value of all such taxes paid on such equipment up to the amount of tax due to the City on such equipment. (Ord. 1052 §10, 1992)

### **3.04.055 Tax on credit sales, etc.**

(a) Whenever an article is sold to a person who thereby is obligated to the vendor on an account, chattel paper, contract right, general intangible or a writing which supports a right to the payment of a purchase price, or any part thereof, the tax shall be based on the total purchase price and shall become immediately due and payable. No refund or credit shall be allowed to either party to a transaction in case of repossession by the vendor of collateral securing the purchase price or any part of the purchase price.

(b) If a retailer transfers, sells, assigns or otherwise disposes of an account receivable, then he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment or other disposition of an account receivable by a retailer to a closely held subsidiary, as defined in Section 3.04.015(29)k, shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account. (Ord. 1052 §11, 1992)

### **3.04.060 Maintenance and service contracts.**

The full contract price of tangible personal property and services sold in connection with the maintenance or service of tangible personal property shall be subject to the tax. Application may be made to the Finance Director for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The Finance Director is hereby authorized, but not required, to determine a percentage based on the ratio that the price of the tangible personal property bears to the total price under said contract. (Ord. 1052 §12, 1992)

### **3.04.065 Provisions relative to building permits.**

(a) Except as provided by Subsection (c) of this Section, every person who is required to obtain a City building permit shall pay use tax on construction materials used on that project, whether purchased from sources inside or outside the City, in either of the following two (2) ways, at the option of the Finance Director:

(1) Estimated prepayment. The estimated tax on the cost of construction materials shall be calculated by multiplying the estimated value of this construction project, entered on the building permit by the Building Division, by three percent (3%). Use tax on such estimated cost of construction materials shall be paid at the time the building permit is issued. If use tax is prepaid, interest on any tax deficiency related to construction materials shall be computed from the date of issuance of the certificate of occupancy or temporary certificate of occupancy, whichever is earlier.

(2) Actual cost. The actual cost of construction materials shall be reported and tax paid on monthly returns. If use tax is paid on an actual cost basis, interest on any tax deficiency shall be computed from the date on which tax is due.

(b) No final inspection shall be made by the Building Inspector and no certificate of occupancy shall be issued if the Finance Director determines that all tax due on construction materials for the

project for which the building permit was issued has not been paid or arrangement therefor made with the Finance Director.

(c) No use tax shall be due on construction materials used in construction projects undertaken and managed directly by the City. (Ord. 1052 §13, 1992)

### **3.04.070 Computation of use tax on construction equipment.**

In addition to the use tax on construction materials, use tax shall be due on construction equipment used inside the City.

(1) For construction contracts entered into prior to January 11 1986, the full price paid by the current owner for construction equipment located inside the City shall be subject to the tax.

(2) For construction contracts entered into on or after January 1, 1986:

a. The taxpayer shall identify construction equipment used inside the City as follows:

1. Prior to or on the date the equipment is located inside the City, the taxpayer shall file with the City an equipment declaration on a form provided by the City. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located inside and removed from the boundaries of the City, shall include the description of each such anticipated place of equipment, shall state the actual or anticipated price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the City.

2. The taxpayer shall file with the City an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought inside the City.

3. The taxpayer need not declare any equipment for which the purchase price was less than two thousand five hundred dollars (\$2,500.00). Such equipment shall be presumed to have been purchased in a municipality having a sales or use tax at a rate at least equal to the rate established pursuant to Section 3.04.020 and such tax shall be presumed to have been paid to that municipality.

b. Construction equipment located inside the City for thirty (30) consecutive days or less for which a declaration is properly filed shall be subject to the tax in an amount calculated as follows: one twelfth (1/12) of the price of the equipment at the time it was purchased shall be multiplied by the rate established by Section 3.04.020.

c. Construction equipment located inside the City for more than thirty (30) consecutive days, or equipment for which a declaration has not been properly filed, shall be subject to use tax on the full price of such equipment. (Ord. 1052 §14, 1992)

### **3.04.075 Acquisition, inception or cessation of business.**

(a) Acquisition of an existing business:

(1) Seller's responsibilities: Any person engaged in business in the City who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business.

(2) Purchaser's responsibilities:

a. Any person who purchases an existing business shall be responsible for determining the total tax liability of that business and shall withhold from the initial purchase payment an amount sufficient to cover any such tax liability, unless the former owner produces a receipt from the City that there is not tax due.

b. Any amount so withheld shall be paid to the City within ten (10) days of the date of the sale of the business.

c. Any purchaser who fails to withhold such tax due or fails to pay to the City the amount so withheld within the ten-day period allowed, shall, as well as the seller, be liable for any unpaid tax due.

(b) Inception of business; initial use tax: Any person who purchases or establishes a business inside the City shall file an initial use tax return.

(1) Existing businesses: Use tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is acquired with the purchase of a business. The tax shall be based on the price of such property as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great or greater than the fair market value of such property. Where the transfer of ownership is a lump sum transaction, the use tax shall be due on the book value established by the purchaser for income tax depreciation purposes or fair market value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. Such tax shall be reported on an initial use tax return. The reporting period for such return shall be the calendar month of the date of sale.

(2) New businesses: Use tax shall be due on the price of all tangible personal property, except inventory held for lease, rental or resale, which is purchased for use inside the City. Such tax shall be reported on the initial use tax return. The reporting period for such return shall be the calendar month of the opening day of business.

(c) Cessation of business: Every person engaged in business in the City who quits doing business in the City shall file a final return. The reporting period for such return shall end on the last day of business in the City. (Ord. 1052 §15, 1992)

## *II. Taxpayer's Responsibilities*

### **3.04.080 Retailer responsible for collection and payment of tax.**

Every retailer engaged in business in the City shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the rate established by Section 3.04.020.

(1) Tax added to price: Retailers shall add the tax imposed or the average equivalent thereof, to the price showing such tax as a separate and distinct item. Except as provided in this Subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the sales tax or any part thereof shall be assumed or absorbed by the retailer or that it will not be added to the price, or if added, that it or any part thereof shall be refunded.

a. Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from electing to include in his or her purchase price any tax levied under this Section. Once having made the election and having reported his or her decision to the City on such forms as are prescribed by the City Treasurer, he or she must continue to impose and collect the tax in the manner elected unless granted authorization to change by the City Treasurer. Any excess taxes collected are to be remitted to the City in accordance with paragraph (3) of this Section.

b. Sales tax may be included in the price of items sold from coin-operated devices or the price of utilizing such devices.

(2) Tax constitutes debt: Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.

(3) Excess tax: No retailer shall retain any sales tax collected in excess of the tax computed, but shall report such excess collection on the return for the period in which it was collected and include it in the calculation of tax due.

(4) Disputed tax: When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser may then submit a claim for refund to the City within sixty (60) days of the date of purchase. Any such tax refunded by the City will be paid directly to the purchaser. (Ord. 1052 §16, 1992)

### **3.04.085 Trust status of tax in possession of retailer.**

All sales or use tax collected by a retailer shall be the property of the City and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the City until paid to the City. (Ord. 1052 §17, 1992)

**3.04.090 Use tax; method of payment.**

Every consumer who has not paid the sales tax to a retailer shall, unless the credit established in Section 3.04.050(b)(2) applies, complete the use tax schedule of a return and pay the tax due to the City.

(1) The due date for licensed taxpayers shall be that established by Section 3.04.145.

(2) The due date for resident individuals shall be twenty (20) days from the end of the reporting period in which the taxable transaction occurred. (Ord. 1052 §18, 1992)

**3.04.095 Filing returns; due date.**

(a) Every taxpayer shall file a return, whether or not tax is due, and remit any tax due to the City on or before the twentieth day of the month following the reporting period.

(b) A retailer engaged in business in the City at two (2) or more locations, whether inside or outside the City, who collects sales tax, may file one (1) return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

(c) Any consumer reporting use tax due from two (2) or more locations may file one (1) return for all such locations.

(d) For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying tax due.

(e) No person shall make any false statement in connection with a return. (Ord. 1052 §19, 1992)

**3.04.100 Reporting periods.**

(a) Unless otherwise approved, taxpayers must file returns and pay tax as follows:

(1) A taxpayer whose monthly tax due is less than ten dollars (\$10.00) may file returns and pay tax annually, semiannually, quarterly or monthly;

(2) A taxpayer whose monthly tax due is less than twenty dollars (\$20.00) may file returns and pay tax semiannually, quarterly or monthly;

(3) A taxpayer whose monthly tax due is less than forty dollars (\$40.00) may file returns and pay tax quarterly or monthly; or

(4) A taxpayer whose monthly tax due is forty dollars (\$40.00) or more shall file returns and pay tax monthly.

(b) The reporting period for a final return shall end on the date of the transfer of ownership of the business.

(c) The reporting period for an initial use tax return shall be the calendar month of the date of sale if a business was purchased or opening day of business if a business is new.

(d) The reporting period for a vendor selling tangible personal property at a temporary location or special event inside the City who is not required to obtain a license shall end on the day the temporary location closes or special event concludes.

(e) If the accounting methods employed by the taxpayer or other conditions, are such that returns made on a calendar month basis will impose unnecessary hardship, the Finance Director may, upon written request of the taxpayer, accept returns at such intervals as will, in the opinion of the Finance Director, better suit the convenience of the taxpayer, but not jeopardize the collection of the tax.

(f) If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director and immediately following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted. (Ord. 1052 §20, 1992)

#### **3.04.105 Duty to keep books and records.**

(a) Every person engaged in business in the City shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which will allow the accurate determination of the tax due. The date of such taxable transactions for construction projects inside the City shall be the date the final certificate of occupancy is issued.

(b) Every person who uses construction equipment inside the City shall keep and preserve for at least three (3) years after the final certificate of occupancy for such project is issued, records of the time each piece of construction equipment was located inside the City and any sales or use tax on such construction equipment.

(c) Every person shall provide all such records for audit by the Finance Director during normal business hours. (Ord. 1052 §21, 1992)

### *III. Licensing*

#### **3.04.110 License required.**

(a) Except as provided in this Section, any person engaged in business in the City must first obtain a license.

(1) No license shall be required for any governmental agency or charitable organization which is exempt from the sales and use tax under this Chapter.

(2) No license shall be required for any retailer selling tangible personal property at a temporary location or special event inside the City for periods of seven (7) consecutive days or less, not exceeding a total of twenty-one (21) days per calendar year. The reporting period for

such temporary location or special event shall end on the day the temporary location closes or special event concludes.

(b) When business is transacted by one (1) person at two (2) or more separate locations inside the City, a separate license for each place of business shall be required.

(c) Any person reporting use tax on an actual cost basis for one (1) or more construction projects inside the City shall obtain a separate license for each project; except that persons who sell tangible personal property, together with the installation of such property, which installation requires a building permit, including but not limited to satellite dishes, hot tubs, decks, patios and signs, may report tax on an actual cost basis for all projects inside the City under one (1) license. (Ord. 1052 §22, 1992)

#### **3.04.115 License; application and content.**

(a) Persons for whom a license is required shall first submit to the Finance Director an application stating the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as may be required by the Finance Director.

(b) Licenses which are granted shall be issued without fee by the City Finance Director.

(c) Each license shall be numbered and shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.

(d) No license shall be transferable. After any sale of a business, the new owner shall apply for a new license. (Ord. 1052 §23, 1992)

#### **3.04.120 License cancellation or revocation.**

(a) Cancellation: The Finance Director may cancel any license:

(1) Upon receipt of a written notice that the taxpayer is no longer engaged in business in the City; or

(2) Upon the taxpayer's failure to respond to three (3) consecutive notices of delinquency. The Finance Director shall give notice to the taxpayer that the license has been cancelled.

(b) Revocation: The Finance Director may, after a reasonable notice and after a full hearing, issue a finding and order to revoke the license of any person found to have violated any provision of this Chapter.

(c) Appeal: Any person may appeal a finding and order revoking his or her license in District Court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedures.

(d) No taxpayer shall continue engaging in business in the City after his or her license has been cancelled or revoked. (Ord. 1052 §24, 1992)

#### *IV. Administration*

##### **3.04.125 Authority of the Finance Director.**

The administration of this Chapter is hereby vested in the Finance Director.

(1) Forms and procedures: The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of the tax.

(2) Regulations: The Finance Director may formulate and promulgate, after hearing, appropriate regulations to effectuate the purpose of this Chapter.

(3) Additional information: The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax.

(4) Subpoenas: The Finance Director may issue a subpoena to command a person to attend and give testimony or to produce books, accounts and records.

a. Any subpoena issued under the terms of this Chapter shall be served as set forth in the Colorado Rules of Civil Procedure, including the payment of witness fees. When the witness is subpoenaed at the insistence of the City, such fees shall be paid by the City. When a witness is subpoenaed at the insistence of the taxpayer, the Finance Director may require that the cost of service of the subpoena and the fee be paid by the taxpayer. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.

b. If a subpoena issued by the Finance Director is duly served and the respondent fails to attend, give testimony or provide books, accounts and records as commanded, the Finance Director may request the City Attorney to file a motion with the Municipal Court for an order enforcing the subpoena.

(5) Oaths: The Finance Director is authorized to administer oaths and take testimony at the hearing.

(6) Agents: The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Chapter.

(7) Partial payments: The Finance Director may accept any partial payment made and apply such payments towards the tax due. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated.

(8) If the Finance Director determines that a person has registered or caused to be registered a motor vehicle outside the City and that such motor vehicle should have been registered at an address in the City, the Finance Director is authorized to assess a civil penalty of an amount up to one hundred percent (100%) of the actual amount of the sales tax due against the person. A written notice of the penalty assessment shall be issued and may be protested in the same manner as a notice of assessment. The Finance Director may enforce collection of the penalty assessment in the same manner as provided herein for the collection of tax due. Assessment and collection of

the penalty shall not preclude the collection of any tax due or fee or the imposition of any civil or criminal penalty provided by law.

(9) Notices: Notices required herein shall be in writing and delivered in person or sent postpaid by first class mail, to the last known address of the taxpayer. (Ord. 1052 §25, 1992)

#### **3.04.130 Audit of records.**

(a) For the purpose of ascertaining the correct amount of tax due from any person engaged in business in the City, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such person.

(b) All books, accounts and records shall be open at any time during regular business hours for examination by an authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director or authorized agent, the Finance Director may issue a subpoena to require that the taxpayer or his or her representative attend a hearing or produce any such books, accounts and records for examination.

(c) Any charitable corporation claiming exemption under the provisions of this Chapter is subject to audit in the same manner as any other person engaged in business in the City. (Ord. 1052 §26, 1992)

#### **3.04.135 Tax information confidential.**

All specific information gained under the provisions of this Chapter which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the City and its officers, employees or legal representatives as confidential.

(1) Except in accordance with judicial order or as otherwise provided by law, the City Manager and agents, clerks and employees thereof, shall not divulge or make known in any way any information disclosed in any document, report or return filed under this Title except such information as is displayed on the tax license. The officials charged with the custody of documents, reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of this Title when the report of a fact shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(2) Nothing in this Section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof of a copy of any return or report filed in connection with such person's tax. Copies of such records may be certified by the City Manager or an agent thereof, and when so certified shall be evidence equally with the originals and may be received as evidence of their contents.

(3) Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the City Attorney or other legal representatives of the City.

(4) Notwithstanding the provisions of this Section, the City Manager may furnish to the taxing officials of the State, its political subdivisions, any other state or political subdivision, or the United States, any information contained in tax returns and related documents filed pursuant to this Chapter or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the City Manager to grant similar privileges to the City and if such information is to be used by the jurisdiction only for tax purposes.

(5) If a City employee or officer violates the provisions of this Section, such employee or officer shall be dismissed from office. (Ord. 1052 §27, 1992)

**3.04.140 Timely payment; computation of dates.**

(a) Timely payment shall be evidenced by the postmark date if mailed; otherwise, timely payment shall be evidenced by the City cashier validation date.

(b) If payment is made by placement in the City's night depository, payment shall be timely made if received by the City on the next working day after the payment would be otherwise due.

(c) Any due date, payment date or deadline for paying tax due, providing information or taking other action, which falls on a Saturday, Sunday or legal holiday recognized by either the Federal Government or the State, shall be extended to the first business date following such weekend or holiday. (Ord. 1052, §28, 1992)

*V. Tax Overpayments*

**3.04.145 Overpayment from returns.**

If the amount remitted with the return is more than the tax due as computed from information in such return, the taxpayer shall be notified. If the overpayment is made, it shall be credited to the tax due for the next reporting period. (Ord. 1052 §29, 1992)

**3.04.150 Tax overpayment determined through audit.**

If the City ascertains through an audit of a taxpayer's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim for refund, if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment. (Ord. 1052 §30, 1992)

**3.04.155 Refunds of disputed tax.**

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase. (Ord. 1052 §31, 1992)

### **3.04.160 Claim for refund.**

No tax overpayment except as provided in Section 3.04.145 shall be refunded unless a claim for refund is signed and submitted to the City by the taxpayer.

- (1) Application: An application for refund of tax shall:
  - a. Be made on a claim for refund form furnished by the City;
  - b. Be signed by the taxpayer; and
  - c. Include adequate documentation of the claim.
- (2) Decision: The Finance Director shall examine the claim for refund and give written notice to the taxpayer of the amount to be refunded or denied.
- (3) Refunds not assignable: The right of any person to obtain a refund pursuant to this Chapter shall not be assignable.
- (4) No person shall make any false statement in connection with a claim for refund. (Ord. 1052 §32, 1992)

## *VI. Tax Deficiencies*

### **3.04.165 Underpayments from returns.**

If the amount remitted with a return is less than the tax computed from information in such return, the taxpayer shall be notified. If the underpayment is due, it shall be added to the tax due for the next reporting period. (Ord. 1052 §33, 1992)

### **3.04.170 Tax deficiencies from failure to file.**

- (a) If any taxpayer neglects or refuses to obtain a license, the amount of tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.
- (b) If any taxpayer neglects or refuses to file a return by the due date, the tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.
- (c) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment. (Ord. 1052 §34, 1992)

### **3.04.175 Tax deficiencies determined through audit.**

If the City ascertains through an audit of the taxpayer's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued. (Ord. 1052 §35, 1992)

### **3.04.180 Penalties.**

(a) Penalty for late payment: A penalty shall be levied on any tax deficiency. For transactions consummated on or after April 1, 1992, such penalty shall be ten percent (10%) of the tax deficiency.

(b) Penalty for fraud: If any tax deficiency is due to fraud or the intent to evade the tax, the penalty shall be two hundred percent (200%) the total tax deficiency.

(c) Penalty for repeated enforcement: If six (6) notices of assessment have been issued to the same taxpayer within thirty-six (36) consecutive months, a special penalty of one hundred percent (100%) of the tax due for the most recent reporting period shall be levied.

(d) Abatement of penalty: Any penalty assessed in this Section may be abated by the Finance Director if the taxpayer submits a written request for such abatement within ten (10) days after the original due date of such return, and if all of the following additional conditions are met:

- (1) The Finance Director finds good cause therefor;
- (2) The taxpayer is on a monthly filing basis;
- (3) During the last twelve (12) consecutive months in which returns have been filed, there have been no delinquent returns presented by the taxpayer;
- (4) No other penalties or interest have been abated to the taxpayer during the last twelve (12) months;
- (5) Payment of the taxes is made within ten (10) days of the original due date of the tax;
- (6) The payment is actually received by the City, or the postmark is actually encrypted by the United States Postal Service within the ten-day time limit.

(e) Vendor's abatement: In the event that a vendor applies for and receives an abatement of penalty or interest, the vendor shall not be entitled to a vendor fee for the period of time covered by the delinquent return for which the penalty and/or interest abatement was requested. (Ord. 1209 §§5, 6, 1998; Ord. 1174 §§1--3, 1997; Ord. 1052 §36, 1992)

### **3.04.185 Interest.**

Interest shall be levied on any tax deficiency.

(1) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. For transactions consummated on or after April 1, 1992, the

monthly interest rate shall be one and one-half percent (1½%) or eighteen percent (18%) per annum.

(2) When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the interest date of such assessment and the payment date established in an informal meeting or thirty (30) days after the date of a findings of fact, conclusion and decision issued after a hearing.

(3) Interest properly assessed on any tax deficiency shall not be abated. (Ord. 1052 §37, 1992)

#### **3.04.190 Notice of assessment.**

The Finance Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.

(1) Notices of assessment shall be in writing and delivered in person or sent postpaid by first class mail, to the last known address of the taxpayer.

(2) The payment due date for the tax due pursuant to a notice of assessment shall be as stated in the notice of assessment. (Ord. 1052 §38, 1992)

### *VII. Taxpayer's Remedies*

#### **3.04.200 Protest of notice of assessment or denial of refund.**

(a) Any notice of assessment may be protested by the taxpayer to whom it is issued.

(1) Such protest must be submitted in writing to the Finance Director on or before the payment due date of such notice of assessment and must identify the amount of tax disputed and the basis for the contention that the tax is not due.

(2) When a timely protest is made, no further enforcement action will be instituted by the City for the portion of the assessment being protested unless the taxpayer fails to pursue the protest of timely manner.

(b) Protest of denial of refund: Any denial of a claim for refund may be protested by the taxpayer who submitted the claim. Such protest must be submitted in writing to the Finance Director within twenty-one (21) days of the Finance Director's denial and shall identify the amount of the denial contested and the basis for the contention that the refund is due.

(c) Any timely protest entitles a taxpayer to a hearing under the provisions of this Chapter.

(1) If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be received administratively, the Finance Director may recommend an informal meeting with the taxpayer.

(2) Participation in such an informal meeting does not prevent either the taxpayer of the City from holding a hearing if the dispute cannot be resolved by such meeting. (Ord. 1052 §40, 1992)

### **3.04.205 Hearings.**

(a) The City shall commence a hearing within ninety (90) days after the City's receipt of the taxpayer's written protest; except the City may extend such period if the delay is requested by the taxpayer. The Finance Director shall notify the taxpayer in writing of the time and place of such hearing.

(b) Every hearing shall be held in the City before the Finance Director.

(c) The taxpayer may assert any facts make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest. The filing of briefs shall not be required.

(d) Based on the evidence presented at the hearing, the Finance Director shall issue a findings of fact, conclusions and decision which may modify or abate in full the tax, penalties and interest protested at the hearing, approve a refund or uphold the assessment.

(e) After such hearing, the taxpayer shall not be entitled to a second hearing on the same notice of assessment or denial or refund.

(f) Unless the decision of the Finance Director is appealed as provided in this Chapter, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the findings of fact, conclusions and decision. (Ord. 1052 §41, 1992)

### **3.04.210 Review by District Court.**

(a) If the petitioner or an applicant for a refund is aggrieved at the final decision of the Finance Director, then he or she may proceed to have same reviewed by the District Court. The procedure of review shall be in accordance with Rule 106(1)(4) of the Colorado Rules of Civil Procedure.

(b) Within fifteen (15) days after filing a notice of appeal as provided herein, the taxpayer shall file with the District Court a surety bond in twice the amount of the taxes, interest and other charges stated in the final decision by the Finance Director that are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest and other charges stated in this final decision by the Finance Director. The taxpayer may, at his or her option, deposit the disputed amount with the Finance Director in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court for the Court of Appeals of the State or after the time for such appeal has expired, the funds deposited shall be, at the direction of the District Court, either retained by the Finance Director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed herein. No claim for refund of amounts deposited with the Finance

Director need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the District Court.

(c) The District Court shall have original jurisdiction in proceedings to review all questions of law and fact determined by the Finance Director in administering the provisions of this Chapter by writ under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. Any writ issued pursuant to this Subsection (c) shall be issued by the Clerk of the District Court upon a verified petition of the taxpayer filed within twenty (20) days after notice of the decision of the Finance Director in any such matter. Such writ shall be served within five (5) days after its issuance and shall be returnable at such time as the District Court may determine, not less than ten (10) days nor more than twenty (20) days after the date of issuance of such writ. The Finance Director shall certify the record of his or her proceedings to the District Court.

(d) The decision of the District Court may be reviewed in the Supreme Court of the State upon writ of error by any party thereto. (Ord. 1126 §1, 1994; Ord. 1052 §42, 1992)

### **3.04.215 Alternate review by Department of Revenue.**

In lieu of the procedure provided for in Section 3.04.210, the taxpayer may elect a hearing on the Finance Director's final decision on a deficiency notice or claim for refund pursuant to procedure set forth in the Section.

(1) As used in this Section, *state hearing* means a hearing before the Executive Director of the Department of Revenue or a delegate thereof as provided in Section 29-2-106.1(3), C.R.S.

(2) When the Finance Director asserts that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, then the Finance Director shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional sales or use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-2-106.1(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the Finance Director's denial of such taxpayer's claim for a refund of sales or use tax paid.

(3) The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he or she has not exhausted local remedies or if he or she fails to request such hearing within the time period provided for in this Subsection. For purposes of this Subsection, *exhaustion of local remedies* means:

a. The taxpayer has timely requested in writing a hearing before the Finance Director and the Finance Director has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required, but the taxpayer may elect to submit a brief, in which case the Finance Director may submit a brief. The Finance Director shall hold such hearing and issue the final decision thereon within ninety (90) days after the Finance Director's receipt of the taxpayer's written request therefor, except that the City may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but in any such event, the Finance Director

shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor; or

b. The taxpayer has timely requested in writing a hearing before the Finance Director, and the Finance Director has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in Subsection (3)a of this Section.

(4) If a taxpayer has exhausted his or her local remedies as provided in Subsection (3)a of this Section, then the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in Section 29-2-106.1(3) through (7) inclusive, C.R.S.

(5) If the deficiency notice or claim for refund involves only the Finance Director, then in lieu of requesting a state hearing, the taxpayer may appeal such deficiency or denial of a claim for refund to the District Court as provided in Section 29-2-106.1(8), C.R.S., if the taxpayer complies with the procedures set forth in Subsection (3) of this Section.

(6) No provision of this Section shall prohibit the taxpayer from pursuing judicial review of a final decision of the Finance Director as otherwise provided in Section 3.04.210. (Ord. 1126 §1, 1994; Ord. 1052 §43, 1992)

### **3.04.220 Appeals.**

(a) Subsequent to a hearing the taxpayer may appeal the decision of the Finance Director in District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(b) Upon appeal to the District Court, the taxpayer shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director. (Ord. 1052 §44, 1993)

## *VIII. Enforcement*

### **3.04.225 Lien for tax due.**

(a) Issuance: If any tax due is not paid by the payment date of a notice of assessment, the Finance Director may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the tax due, the date of the accrual thereof and the location of the property, and shall be certified by the Finance Director.

(b) Filing: The notice of lien shall be filed in the office of the Clerk and Recorder of any county in Colorado in which the real or personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.

(c) Priority: The attachment and priority of such lien shall be as follows:

(1) Such lien shall be a first and prior lien upon the goods and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract

agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.

(2) Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade and business fixtures shall be a first and prior lien except as to preexisting claims or liens of a bona fide mortgagee, pledge, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.

(3) The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this Subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county Clerk and Recorder of the county where the property is located or based.

(4) Motor vehicles which are properly registered in this State, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed the fair market value or similar interest which is or may be credited to the lessee.

(5) Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this Section.

(d) Enforcement against real property: If a notice of lien is filed against real property, the Finance Director may direct the City Attorney to file a civil action to enforce such lien. The Court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for a manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the Court may appoint a receiver of the real property involved in such action if equity so requires. (Ord. 1052 §45, 1992)

#### **3.04.230 Perpetuance of lien.**

(a) Any lien for tax due shall continue until a release of lien is filed by the Finance Director.

(b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired. (Ord. 1052 §46, 1992)

#### **3.04.235 Release of lien.**

Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of lien with the Clerk and Recorder of the county in which the lien was filed. (Ord. 1052 §47, 1992)

**3.04.240 Civil action to recover tax due.**

(a) Any unpaid tax due shall constitute a debt of the taxpayer to the City and the Finance Director may direct the City Attorney to file a civil action to collect such tax due.

(b) The return filed by a taxpayer or the notice of assessment issued by the Finance Director shall be prima facie proof of the tax due.

(c) If a judgment is obtained by the City, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought no bond shall be required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Ord. 1052 §48, 1992)

**3.04.245 Jeopardy assessment.**

(a) Issuance: If the collection of any tax due from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the City Manager may declare the taxable period immediately terminated, order the Finance Director to determine the tax and issue a jeopardy assessment and demand for payment. Any tax so assessed shall be due and payable immediately.

(b) Security for payment: Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the City Manager.

(c) Dispute of jeopardy assessment: If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the City. (Ord. 1052 §49, 1992)

**3.04.250 Distraint and sale.**

(a) Unless such property is exempt by state statute from distraint and sale, the City Manager may sign and issue a warrant directed to any employee or agent of the City, or any sheriff of any county in Colorado, commanding the distraint and sale of personal property of the taxpayer on which a lien has attached for the payment of the tax due.

(1) Such warrant may be issued if the tax due is not paid on or before twenty-one (21) days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.

(2) Such warrant may be issued immediately if a jeopardy assessment and demand for payment has been issued.

(b) If the taxpayer does not volunteer entry to the premises, the City Manager may apply to the Municipal Court for a warrant authorizing any employee or agent of the City to search for and obtain property located inside the City to enforce the collection of tax due.

(1) The City Manager shall demonstrate to the Court that the premises to which entry is sought contains property that is subject to distraint and sale for tax due.

(2) If a jeopardy assessment and demand for payment has been issued, the City Manager shall specify to the Court why collection of the tax will be jeopardized.

(3) The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) Disposal of distrained property:

(1) A signed inventory of the property distrained shall be made by the City or its agent. Prior to the sale, the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the tax due and related expenses incurred to date, and the time and place of sale.

(2) A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where distraint is made, and in at least two (2) other places within such county.

(3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the City or agent for no more than ninety (90) days from the date originally fixed for the sale.

(4) The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the City and the City shall file a release of lien thereof. If the property is purchased by the City, such property may be disposed of in the same manner as other City property and the lien thereon shall be released.

(5) The property may be offered first by bulk bid, then subsequently for bid singularly or by lots and the City or its agent may accept the higher bid.

(6) The property offered for sale may be redeemed if the owner, possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs no less than twenty-four (24) hours before the sale.

(7) The City or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale and transfer to the purchaser of all right, title and interest of the taxpayer in and to the property sold.

a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company or association to record the transfer on its books and records.

b. When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.

(8) Any surplus remaining after satisfaction of the tax due, plus any costs of making the distraint and advertising the sale, may be distributed by the City first to other jurisdictions which

have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner or such other person having a legal right thereto.

(9) The Finance Director shall submit a written account of the sale to the City Manager.

(d) Exempt property: Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property described as such in Section 3.04.215(c).

(e) Return of the property: The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the City Manager, or the Municipal Court if the property was seized pursuant to a warrant issued by the Court, for the return of the property.

(1) The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the City's interest or that the property is exempt from the City's lien.

(2) The fact finder shall receive evidence on any issue of fact necessary to the decision of the petition. If the fact finder determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned. (Ord. 1052 §50, 1993)

#### **3.04.255 Status of tax due in bankruptcy and receivership.**

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors or distrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of the Finance Director until such time as after the determination of the amount of tax due. The officer shall pay any tax due before making payment to any judgment creditor or other claimants. (Ord. 1126 §§2, 8, 1994; Ord. 1052 §51, 1992)

#### **3.04.260 Violations; summons and complaint; penalty.**

(a) It shall be a violation of this Chapter to fail to perform any applicable affirmative duty specified in this Chapter, including, but not limited to:

(1) The failure of any person engaged in business in the City to obtain a license.

(2) The failure of any taxpayer to file a timely return or to make timely payment of any tax due.

(3) The failure of any resident individual or business to comply with the registration requirements for automotive vehicles.

(4) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing.

(5) The evasion of collection of any sales tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

(b) The Finance Director may direct the issuance of a complaint and summons to appear before the Municipal Court of the City to any person who may be in violation of this Chapter or of the rules and regulations promulgated by the Finance Director to enforce this Chapter.

(c) Violations of this Chapter shall be punished by a fine of not more than two thousand dollars (\$2,000.00) or imprisonment of not more than one hundred eighty (180) days or both. Each and every twenty-four (24) hour continuation of any violation shall constitute a distinct and separate offense. (Ord. 1052 §52, 1992)

### **3.04.265 Statute of limitations.**

Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained in this Chapter shall be as follows:

(1) Refunds.

a. Any claim for refund for disputed tax shall be submitted to the City on or before sixty (60) days from the date of such purchase.

b. Any claim for refund resulting from a notice for overpayment shall be submitted to the City on or before thirty (30) days after the date of such notice for overpayment.

c. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the City.

(2) Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due, or for a construction project which requires a City building permit, the date the final certificate of occupancy was issued for such project.

(3) Liens. No notice of lien shall be issued more than three (3) years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for such extended period.

(4) Returns.

a. When a taxpayer fails or refuses to file a return, the tax due may be assessed and collected at any time.

b. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may be begun at any time.

(5) Protest. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the Finance Director in other than written form or after the period allowed in this Chapter.

(6) The period of limitation may be extended before its expiration.

a. The taxpayer and the Finance Director may agree in writing to extend the period.

b. If the City provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Chapter, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice for overpayment issued as a result of such audit. Audit period is the thirty-six-month reporting period preceding the date of the notice of audit, or if a City building permit is required, the period between the issuance of such building permit and the issuance of a final certificate of occupancy.

(7) Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this Section. (Ord. 1052 §53, 1992)

### *IX. Miscellaneous*

#### **3.04.270 Coordinated audit.**

(a) Any taxpayer licensed in the City pursuant to this Chapter, and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

(b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director for this City, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer sign a waiver of any passage-of-time based limitation upon this City's right to recover tax owed by the taxpayer for the audit period.

(c) Except as provided in Paragraph (g), any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the provisions of any passage-of-time based limitation imposed upon the City's right to recover taxes owed for the proposed audit period, may be audited by this City during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(d) If this City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (c), the Finance Director shall so notify the Finance Director of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Finance Director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's Finance Director shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The Finance Director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(f) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's Finance Director shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The Finance Director shall also propose a schedule for a coordinated audit.

(g) The coordinated audit procedure set forth in this Section shall not apply:

- (1) When the proposed audit is a jeopardy audit;
- (2) To audits for which a notice of audit was given prior to the effective date of this Section;
- (3) When a taxpayer refuses to promptly sign a waiver that could limit, based upon passage of time, the City's right to recover for a portion of the audit period; or
- (4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (b). (Ord. 1052 §55, 1992)

### **3.04.275 Claims for Recovery.**

The intent of this Section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes to the City.

(1) As used herein, *Claim for Recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(2) When it is determined by the Director of Finance of the City that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.

(3) The City may make a written Claim for Recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a Claim for Recovery lies in the sole discretion of the City. Any Claim for Recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes

paid to the wrong municipality, evidence to substantiate the Claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the city submits a Claim for Recovery may, for good cause, request an extension of time to investigate the Claim and approval of such extension by the City shall not be unreasonably withheld.

(4) Within ninety (90) days after receipt of a Claim for Recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the Claim in writing that the Claim is either approved or denied in whole or in part, including the reasons for the decision. If the Claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the Claim within thirty (30) days of approval. If a Claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a Claim for Recovery may only be made for good cause.

(5) The City may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer.

(6) The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery.

(7) A protest of a notice of assessment issued to a taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest. The time period set forth in this Section may, in the absolute discretion of the Finance Director, be waived for good cause on written application of a vendor or taxpayer.

(8) A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of denial of the refund and shall identify the amount of the refund requested and the basis for the protest. The time period set forth in this Section may, in the absolute discretion of the Finance Director, be waived for good cause on written application of a vendor or taxpayer.

(9) An appeal of a decision of the Finance Director on a hearing held pursuant to Section 3.04.275 shall be commenced within thirty (30) days of such decision. The time period set forth in this Section may, in the absolute discretion of the Finance Director, be waived for good cause on written application of a vendor or taxpayer. (Ord. 1052 §56, 1992)

### **3.04.280 Notice of sales and use tax ordinance amendment.**

(a) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Finance Director of the City shall file with the Colorado Municipal League prior to the effective date of this Section a copy of the City sales and use tax ordinance reflecting all provisions in effect on the effective date of this Section.

(b) In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Finance Director of the City shall file with the Colorado Municipal League prior to the effective date of any amendment a copy of each sales and use tax ordinance amendment enacted by the City.

(c) Failure of the City to file such ordinance or ordinance amendment pursuant to the section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto. (Ord. 1052 §57, 1992)

### **3.04.290 Revenue changes.**

Pursuant to Article X, Section 20 of the State Constitution, the qualified electors of the City authorize the City to collect, retain and expend the full proceeds of the City's sales and use tax and all available nonfederal grants, notwithstanding any state restriction on fiscal year spending, including without limitation the restrictions of Article X, Section 20 of the State Constitution. Such taxes and grants shall be excluded from the definition of fiscal year spending contained in Article X, Section 20 of the State Constitution on and after January 1, 1993. Nothing in this Section shall be interpreted to authorize any increase in the rate of taxation of the sales and use tax, without a vote of the people if and when required pursuant to Article X, Section 20 of the State Constitution. (Ord. 1102 §1, 1993)

## **CHAPTER 3.08**

### **Telephone Use And Occupancy Tax**

#### **3.08.010 Tax levied.**

There is levied on and against each telephone utility company operating within the City a tax on the use and occupancy of City streets and rights-of-way in the City and of supplying local exchange telephone service to the inhabitants of the City. The amount of the tax levied shall be:

Commencing January 1, 1980, five dollars (\$5.00) per telephone account for which local exchange telephone service is provided within the corporate limits of the City on the anniversary of the date on which the tax begins to accrue as provided in Section 3.08.020. (Ord. 775 §1, 1979)

#### **3.08.020 Date of accrual.**

The tax levied by this Chapter shall begin to accrue on the first day of January, 1980, and shall be due and payable in four (4) equal quarterly installments to be paid on the last business days of the months of March, June, September and December. (Ord. 775 §2, 1979)

#### **3.08.030 Statement of filing.**

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 3.08.020, each telephone utility company subject to this Chapter shall file with the Director of Finance, in such form as the Director may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City on said date. Such statement shall be filed within thirty (30) days after each anniversary of the date on

which the tax begins to accrue, showing such accounts on the anniversary date. (Ord. 948 §3, 1987; Ord. 775 §3, 1979)

**3.08.040 Failure to pay.**

If any telephone utility company subject to the provisions of this Chapter fails to pay the taxes as provided in this Chapter, the full amount thereof shall be due and collected from such company and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and is declared to be a debt due and owing from such company to the City. The City Attorney upon direction of the City Council shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the debt. (Ord. 775 §4, 1979)

**3.08.050 Inspection of records.**

The City shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Chapter and to make copies of the entries or contents thereof. (Ord. 775 §6, 1979)

**3.08.060 Local purpose.**

The tax provided in this Chapter is upon the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Chapter be construed to mean that any telephone utility company is issued a franchise by the City. (Ord. 775 §7 1979)

**3.08.070 Penalty for violation.**

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Chapter fails, neglects or refuses to make or file the annual statement of accounts provided in Section 3.08.030, the officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided that each day after said statement becomes delinquent during which the officer, agent, manager or person so fails, neglects or refuses to make and file such statement shall be considered a separate and distinct offense. (Ord. 775 §5 1979)

**3.08.080 Certain offenses and liabilities to continue.**

All offenses and all liabilities incurred prior to the effective date of the ordinance codified in this Chapter shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to any such offenses and liabilities. All taxes, the liability for which has been accrued under the terms and provisions of Ordinance 717 on or before the effective date of the ordinance codified in this Chapter, shall be and remain unconditionally due and payable and shall constitute a debt to the City payable in conformity with the terms and provisions of Ordinance 717 prior to the adoption of the ordinance codified in this Chapter; and all of said terms and provisions of Ordinance 717 shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of this Chapter. (Ord. 775 §8, 1979)

## **CHAPTER 3.12**

### **Fiscal Year**

#### **3.12.010 Designated.**

The fiscal year of the City shall commence on the first day of January. (Prior code §11-1)