

CITY OF THORNTON COLORADO

MUNICIPAL CODE CHAPTER 26, ARTICLES V - VII TAXATION

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CITY OF THORNTON MUNICIPAL CODE CHAPTER 26, ARTICLES V–VII

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ARTICLE V. SALES AND USE TAX

Sec. 26-386. Legislative intent.

- (a) *Use of personal property and taxable services.* It is declared to be the legislative intent of the city that, for the purposes of this Code, every person who stores, uses, distributes or consumes in the city any article of tangible personal property or taxable services purchased, leased or rented at retail, as defined in Section 26-388, is exercising a taxable privilege.
- (b) *Sale of personal property and taxable services.* It is declared to be the legislative intent of the city that, for the purposes of this Code, every person who is engaged in business in the city, as defined in Section 26-388, and who shall deliver or cause to be delivered to the purchaser in the city any property or services taxable in this Code is exercising a taxable privilege and shall collect the tax imposed by this Code on the total purchase price of such articles of tangible personal property or taxable services that are purchased, sold, leased or rented at any time by or to every customer or buyer in the manner set forth in this Code.

(Code 1975, § 9-9; Ord. No. 2134, 12-16-91)

Sec. 26-387. Imposition of tax; rate.

- (a) *Levied.* There is levied and there shall be collected and paid a tax on the purchase price paid or charged for tangible personal property and taxable services when purchased or sold at retail, by every person exercising the taxable privilege, as defined in Section 26-386, by the sale, lease, rental, purchase, use, storage, distribution or consumption of tangible personal property and taxable services.
- (b) *Rate.* The amount of the tax levied in subsection (a) of this section is 3.75 percent of the purchase price, as defined in Section 26-388, of such tangible personal property and taxable services sold or purchased at retail. Unless otherwise lawfully provided, the 3.75 percent tax rate shall return to 3.5 percent on January 1, 2039. The tax shall be computed in accordance with schedules or systems approved by the executive director of the state department of revenue.

(Code 1975, § 9-10; Ord. No. 2134, 12-16-91; Ord. No. 2469, § 9, 8-25-97; Ord. No. 3277, § 1, 12-17-13)

Sec. 26-388. Definitions; distinctions between sales and use taxes; notices.

- (a) *Sales and use taxes defined; distinctions.*
 - (1) *Sales tax defined.* The city sales tax is levied on all sales, leases and rentals at retail on the basis of the purchase or sale price on purchases of tangible personal property and specific services taxable under this article. All sales and purchases of tangible personal property are subject to the tax, except as specifically exempted. Sales and purchases of services, as specifically set forth in Section 26-389, are subject to the tax. The tax is in reality imposed on the purchaser. The duty is imposed on the seller to collect and remit the tax to the city under the penalties for failure to do so as prescribed in this article.
 - (2) *Use tax defined.* The city use tax is levied upon the privilege of using, storing, distributing or otherwise consuming tangible personal property and taxable services in the city, which property or service is purchased, leased or rented at retail and not subject to the city sales tax, without regard to whether the property or service is purchased either from sources within or without the city. The use tax shall not be applied to the storage of construction and building materials, if such construction and building materials are used for a project where a building permit was issued. Nonresident persons engaged in business in the city, as defined, are required to collect and remit the use tax on taxable transactions.

(3) *Distinction between sales and use taxes.*

- a. Sales and use taxes are complements to each other and together provide for a uniform tax at the rate imposed by Section 26-387(b) upon either the sale, purchase, lease or rental, use, storage, distribution or consumption of all tangible personal property and upon taxable services which are purchased, leased or rented at retail, as defined in this section.
- b. Sales taxes are required to be imposed and collected from the purchaser or consumer on behalf of the city by any person engaged in business in the city and making a taxable retail sale or completing any other taxable transaction within the city. Such sales taxes must be reported and remitted by the seller on a regular basis to the city.
- c. If for any reason a person does not collect City tax on a taxable transaction made within the city, the sales tax that would otherwise have been collected and remitted to the city by the vendor, must be reported and paid as a use tax directly to the city by the purchaser or consumer.
- d. City sales tax should not be paid to persons not licensed by the city.

(b) *Notice.* All notices required to be issued under the provisions of this Code shall be in writing and given by hand delivery, first class mail, or by any other verifiable delivery method that, through prior contact with the taxpayer, is reasonably calculated to provide notice to the taxpayer. If given by mail, the notice shall be sufficient for the purpose of this Code, unless the context indicates otherwise, if mailed postpaid by first class mail to the taxpayer's last known address as shown on the city's tax records or the property tax records of any county wherein the taxpayer owns property taxable under the general property tax laws of the state or to the taxpayer's authorized representative.

(c) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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.

Adjusted gross sales and services means gross sales and services with the addition of:

- (1) Cost of goods purchased tax free by the taxpayer and taken from the taxpayer's stock and used or consumed by the taxpayer personally or used by the taxpayer in the rendering of a service.
- (2) Collection, during the current taxable period, of bad debts that had, during a previous taxable period, been deducted from adjusted gross sales and services.

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.

Automotive vehicle means any vehicle or device in, upon, or by which a 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 vehicles include but are not limited to motor vehicles, trailers, semitrailers, or mobile homes. Automotive vehicles shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

Capital expenditure means an expenditure made by the business or taxpayer for the purpose of providing a permanent addition or improvement to property of the business made with the expectation of existence for a definite period. The term, furthermore, includes those expenditures for that category of items which, when privately owned, are treated as depreciable by the United States Internal Revenue Service for income tax purposes, including but not limited to the purchase of major equipment and motor vehicles.

Charitable organization means any entity which:

- (1) Has been certified as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code; and
- (2) Is a religious organization or is an organization which, exclusively and in a manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons and which thereby lessens the burdens of government.

Code means the Sales and Use Tax Code of the city established in this article or any of the adopted codes of the city, as the context indicates.

Computer software means the internalized instruction code which controls the basic operations (i.e., arithmetic and logic) of the computer causing it to execute instructions contained in system programs, as an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are taxable. Computer software includes programs in which instructions and routines are determined necessary to program the customer's data processing equipment to enable the customer to accomplish specific functions with its EDP system. The software programs may be in the form of:

- (1) Systems programs which control the hardware itself and allow it to compile, assemble and process application programs.
- (2) Application programs which are created to perform business functions, or controls, or monitor processes.
- (3) Prewritten programs (canned) which can be either systems programs or application programs and are not written specifically for the user.
- (4) Custom programs which are created specifically for the user.
- (5) License contracts or agreements which allow the purchaser or lessee to access specific programs.

Construction equipment means any equipment, including mobile machinery and mobile equipment, with a purchase price of \$2,500.00 or more which is used to erect, install, alter, repair, remodel, or otherwise make improvements to any building or structure upon real estate.

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, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The materials listed in this definition, 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.

Consumer means:

- (1) Any individual person; or
- (2) 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.

Consumption means the act or process of consuming; it includes waste, destruction or use.

Days means calendar days unless otherwise specified.

Department of finance or department means the city department charged with promulgating rules and procedures, and enforcing and collecting sales and use tax revenues.

Distribution means the act of distributing any article of tangible personal property purchased at retail for use or consumption, which may include but not be limited to the distribution of advertising gifts, shopper's guides, catalogues, directories or other property given as prizes, premiums or for goodwill or in conjunction with the sales of other commodities or service.

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 to 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.

Engaged in business in the city means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the city. Engaged in business in the city includes, but is not limited to, any one of the following activities by which 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 or more employees, agents or commissioned salespersons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of products or for demonstration or other reasons;
- (3) Maintains one or more employees, agents or commissioned salespersons 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 delivery into the taxing jurisdiction within a 12-month period.

Excess tax means that amount of city tax collected during a reporting period that is in excess of the amount yielded by applying the rate imposed by Section 26-387(b) to city net taxable sales and services and which excessive collection must be remitted to the city using the method prescribed in this article.

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 in which containers, labels and shipping cases are:

- (1) Used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;

- (2) Transferred by such person along with and as a part of the finished product to the purchaser; and
- (3) Not returnable to such person for reuse.

Exemptions means those deductions from adjusted gross sales and services in order to arrive at a taxable base, which exemptions may include exempt transactions, in whole or in part, sale or purchase of exempt commodities, articles or services or sale to exempt persons, who may either be exempt on their direct purchase or exempt on the type of commodity, articles or services purchased, all as set forth in Section 26-390.

Factory-built residential structure means a structure designed for residential occupancy which is substantially fabricated, formed or assembled in manufacturing facilities for installation and final assembly on the building site, such as a mobile home. It does not include travel trailers, campers, camper buses or motor homes.

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.

Food means food for domestic home consumption as defined in 7 USC 2012(g), as amended, for purposes of the federal food stamp program as defined in 7 USC 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 non-coin-operated or coin-collecting food and snack devices on behalf of a vendor.

Freight, delivery means the cost of transporting tangible personal property and/or taxable services to a purchaser to effect a sale, whether at retail or wholesale, by means of common, contract, or commercial carrier, company vehicle, or any type of mail or courier service.

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.

License means a City sales and use tax business license.

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

Medical supplies means drugs, prosthetic medical and dental appliances, and special beds for patients with neuromuscular or similar 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 eyeglass lenses 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.

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 may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been

redesigned or modified by the mounting thereon of 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.

Net taxable sales and services means adjusted gross sales and services, less exemptions therefrom.

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.

Non taxable service sales are those sales that are for labor charges only, billed separately on an invoice, and are not otherwise specifically identified as taxable services under this Code.

Pay television includes but is not limited to cable, microwave or other television service for which a charge is imposed.

Prefabricated goods and materials means any tangible personal property which has been fabricated, constructed, or made into a form by a contractor, subcontractor, manufacturer, or jobber which is ready for installation or use for its intended purpose, and which is brought to its installation site or delivered to the purchaser. The term includes tangible personal property purchased for use in other manufacturing or construction processes by the purchaser, such as construction materials purchased by a contractor in completing a contract.

Preprinted newspaper supplements means inserts, attachments or supplements circulated in newspapers that:

- (1) Are primarily devoted to advertising; and
- (2) The distribution, insertion, or attachment of which is commonly paid for by the advertiser.

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.

Price or purchase price

- (1) Means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this article 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.
- (2) Includes:
 - a. The amount of money received or due in cash and credits.

- b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- 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 the materials used, labor and service performed and the profit thereon.

(3) Does 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 the state. Out-of-state trade-ins 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.

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.

Prosthetic device 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, therapeutic or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

Purchase, sale

- (1) 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.
- (2) Does 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.

Purchaser. See Consumer.

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.

Rental means the short-term use of tangible personal property for consideration.

Resident means a person who resides or maintains such person's domicile within the city or who maintains one or more places of business within the city at the time of a taxable transaction as defined in this article. A person may have dual residency or other place of residence or domicile or place of business outside the city prior to, during or after the occurrence of the taxable transaction and be a resident according to the terms of this definition.

Retail sales means all sales except wholesale sales.

Retailer means any person selling, leasing or renting tangible personal property or services at retail. A retailer shall include any:

- (1) Auctioneer.
- (2) 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.
- (3) 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.

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

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

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.

Sound system services means sound system services involving provision of broadcast or prerecorded 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.

Special accounting basis or estimated percentage basis means the permission to pay or make deposit of city sales or use tax liability on a percentage of gross sales or gross purchases, and which is granted to facilitate tax reporting for qualified consumers or vendors who may petition the city treasurer on the basis prescribed in Section 26-391 and elsewhere in this article.

Storage means any keeping or retention of or exercise or dominion or control over or possession for any length of time of tangible personal property when leased, rented or purchased at retail from sources either within or without the city from any person or vendor.

Tangible personal property means corporeal personal property.

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.

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

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

Taxable services means services subject to tax pursuant to this Code.

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

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.

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 \$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.

Total tax liability means the total of all tax, penalties or interest owed by a taxpayer and includes sales tax collected in excess of such tax computed on total sales.

Use means the exercise, for any length of time, by any person within the city of any right, power or dominion over tangible personal property when rented, leased or purchased at retail from sources either within or without the city, from any person or vendor. Use includes the withdrawal of items from inventory for consumption, distribution, destruction or waste by the person making the withdrawal.

Use tax means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the city.

Vendor. See Retailer.

Vendor's fee means the percent of total city sales and use tax collected which is authorized to be retained by the licensed vendor to recompense the vendor for the vendor's expense of collecting and remitting the city sales tax on the vendor's sales to the various purchasers or consumers. Consumers filing a city use tax report are not entitled to the vendor's fee.

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.

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.

Wholesaler means any person selling to retailers, jobbers, dealers, or other wholesalers, for resale, and not for storage, use, consumption, or distribution.

(Code 1975, § 9-11; Ord. No. 2134, 12-16-91; Ord. No. 2362, §§ 1--5, 1-9-95; Ord. No. 2956, § 1, 8-22-06; Ord. No. 3265, § 1, 9-24-13)

Cross references: Definitions generally, § 1-2.

Sec. 26-389. Taxable transactions, commodities and services.

- (a) It shall be unlawful for any person to fail to collect or any person to fail to pay a tax levied by this Code and on sales on which exemption is disputed. Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation under this Code, the seller shall collect and the purchaser shall pay such tax; the purchaser thereafter may apply

to the city treasurer for a refund of such taxes paid as provided in this Code. There is levied and there shall be collected and paid a tax as stated in Section 26-387 by every person exercising the taxable privilege defined in Section 26-386 as follows:

- (1) *Automotive vehicles.* On the price paid or charged on the sale, lease, lease-purchase, or rental for use or storage of an automotive vehicle to a resident of this city and subject to the applicable responsibilities provided in Section 26-391(j).
- (2) *Bad debts collection.* On the amount of collection, during the current taxable period, of bad debts that had, during a previous taxable period, been deducted.
- (3) *Combined personal property rentals with operator service.* On the price paid or charged for the right of possession or use of tangible personal property granted under lease, hire, or rental contract with an operator, regardless that at all times such rental property remains in the possession of the operator providing the rental service. If the charge for an operator of the property is not separately stated on the rental invoice, the total invoice amount is taxable. If the operator charge is separately stated, only the property rental charge is subject to city tax.
- (4) *Computer software.* On the price paid or charged for computer software. Prewritten (canned) software programs are taxable. If there are significant modifications to prewritten software to customize it to a specific user, charges for labor which are included in the modification are not taxable, but only if such charges are separately billed on the invoice. Custom software programs written specifically for the user and billed on an hourly labor basis are not taxable. Subsequent sales of customized software will be treated as prewritten (canned) software and taxed accordingly.
- (5) *Construction equipment.* All persons who bring construction equipment into the city to use shall be required to pay use tax on the original purchase price or leased cost of such equipment and shall identify such equipment as follows:
 - a. 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 used the equipment inside city limits. The declaration shall include a description of each piece of such equipment, shall state the actual price of each piece of such equipment, and shall include such other information as reasonably deemed necessary by the city.
 - b. The taxpayer shall file the equipment declaration with the city within 90 days after the equipment is brought into the city. For equipment which is brought inside the city for a project of less than 90 days duration, the declaration must be filed no later than ten days after substantial completion of the project.
 - c. Taxpayers need not declare any equipment for which the purchase price was less than \$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 city tax rate imposed by Section 26-387(b), and such tax shall be presumed to have been paid to that municipality.
 - d. Construction equipment which is located in the city for a period of 30 consecutive days or less shall be subject to use tax, the amount of which is calculated as follows: The equipment purchase price shall be multiplied times $1/12$, and the resulting product shall be multiplied by the city tax imposed in Section 26-387(b). Construction equipment which is located in the city for a period of more than 30 consecutive days shall be subject to use tax on the full purchase price of such equipment.

- e. Taxpayers complying with subsections (a) and (b) of this section pertaining to declaration of construction equipment are entitled to exemption from the city tax in accordance with Section 26-390(15) through (17). The exemption for taxes legally imposed by and paid to other statutory and home rule cities on the purchase of construction equipment applies on a pro rata basis, such that if city tax has been paid to another city on only a portion of the equipment purchase price, the city has the right to tax the balance of the purchase price once the equipment is brought into the city. Taxpayers not complying with subsections (a) and (b) of this section will be subject to use tax on the full purchase price of any equipment brought into the city.
- (6) *Construction materials.* On the purchase price paid or charged on the sale of all such materials in accordance with Section 26-391(f).
- (7) *Cost of goods used.* On the cost of goods or tangible personal property purchased without payment of the city sales tax and used, stored, distributed or consumed either personally or in conjunction with the rendering of service.
- (8) *Cover, door and other related charges.* On all cover charges, door or other similarly termed and related charges including the price paid to gain admission or access to any performance, including but not limited to a motion picture, play, concert, or sporting event.
- (9) *Freight or delivery.* On the price paid or charged for freight and delivery services, including: (i) freight-in paid by a retailer to obtain tangible personal property before resale which is passed on to the purchaser in the price of the property or through a separate invoice; (ii) charges to the purchaser for delivery where the vendor transports the property being sold; and (iii) freight and delivery charges included in the price of the property being delivered; but not including any charges billed separately or included as a separate charge on the vendor's invoice for common carrier, postal, or other third party delivery services.
- (10) *Gas, electric and heating services.* On the purchase price paid or charged for steam, heat, gas and electricity furnished and sold for domestic or commercial consumption and not for taxable resale.
- (11) *Linen services.* On the price paid or charged for such services, whether purchased, leased, or rented.
- (12) *Lodging services.* Shall be taxed in accordance with Article VII of this chapter.
- (13) *Maintenance services.* On a specified portion of the purchase price paid or charged for warranty or maintenance services or maintenance agreements and contracts for a term, wherein the price of parts and supplies or software updates are not billed separately on the invoice. The taxable portion of such services shall be a percentage of the total price charged based on the type of item being serviced as follows:
- a. Replacement part contracts, 100 percent.
 - b. Medical equipment, 50 percent.
 - c. All other tangible personal property, 30 percent.
 - d. Hardware/software maintenance contracts, 30 percent.
- (14) *Meals.* On the purchase price paid for or charged for all meals furnished in or from any restaurant, eating house, hotel, drugstore, supermarket, grocery, club, resort, pushcart, motor vehicle, or other mobile facility, or any other place at which meals or food are

regularly sold or are required by law to have foods or meals available for sale. Any mandatory service or service-related charge, whether described as such or as a tip, gratuity, or otherwise, shall be included as part of the purchase price paid for such meals.

- (15) *Pay television services.* On the purchase price paid or charged for pay television services sold, purchased, leased, rented, furnished or used.
- (16) *Prefabricated goods and materials.* On the purchase price or on the complete manufactured cost, including all raw materials, labor, overhead, and profit, of all such goods or materials delivered into and used in the city.
- (17) *Private communication services.* On the price paid or charged for such services, whether purchased, leased or rented.
- (18) *Recreation services.* On the price paid or charged for such services, whether purchased, leased, or rented, except as exempted in Sections 26-390(1), (8) and (20).
- (19) *Security system services.* On the price paid or charged for security system services, including monitoring, whether purchased, leased or rented.
- (20) *Sound system services.* On the price paid or charged for such services, whether purchased, leased, or rented.
- (21) *Tangible personal property.* On the price paid or charged upon the sale, purchase, lease, rental or grant of license to use or on the use, storage, distribution or consumption of tangible personal property purchased. All leases, rentals, or sales of tangible personal property made subsequent to its initial purchase is taxable, whether or not the person leasing, renting or selling that tangible personal property paid the tax imposed by this Code on its initial purchase. The city treasurer may establish, by regulation, requirements pertaining to the apportionment of the price paid or charged, in the case of a lease, rental or grant of license to use tangible personal property as between the taxable amount of such price and any nontaxable amount.
- (22) *Telecommunication service.*
 - a. On the price paid for or charged to an account or telephone located in this city for all telecommunication services, including, without limitation, prices, fees or charges for the purchase, sale or use of all international, interstate, intrastate and local telecommunication services, if these telecommunication services originate from or are received on or use any telecommunication equipment or facilities in the city, without regard to where the bill is actually received.
 - b. To prevent double taxation, any taxpayer, upon proof that the taxpayer has paid a tax in another city on the same telecommunication services that are subject to tax under this subsection, shall be allowed a credit against the tax imposed in this subsection to the extent of the amount of such tax properly due and paid in such other city.
- (23) *Vending devices.* On the price charged by the owner/lessee of vending machine devices for articles of tangible personal property that are to be subsequently sold in those coin-operated vending machines or devices. The city sales tax can be incorporated into the selling price of the tangible personal property. The operator, owner or person selling tangible personal property by coin-operated vending machines or devices shall be liable additionally for the sales and use tax on the purchase or use of the coin-operated devices and on any subsequent lease, rental or sale thereof on the full lease, rental or sale price.
- (24) *WATS/800 services.* On the price paid or charged for such services, whether purchased, leased or rented.

- (b) The tax must be collected notwithstanding sales made outside the city. Every vendor required or permitted to collect the tax shall collect the tax imposed by the provisions of this Code notwithstanding the following, if the property purchased is intended to be brought into the city for use, storage or consumption in the city:
- (1) The purchaser's order or the contract of sale is delivered, mailed or otherwise transmitted by the purchaser to the vendor at a point outside of the city as a result of solicitation by the vendor through the medium of a catalogue or other written advertisement or by any other means;
 - (2) The purchaser's order or contract of sale was made or closed by acceptance or approval outside of the city or before such tangible personal property enters the city;
 - (3) The purchaser's order or contract of sale provides that such property shall be or is in fact procured or manufactured at a point outside the city, and shipped directly to the purchaser from a point of origin;
 - (4) Such property is mailed to the purchaser in the city from a point outside the city or delivered to a carrier at a point outside the city, F.O.B. or otherwise, and directed to the purchaser in the city, regardless of whether the cost of transportation is paid by the vendor or by the purchaser; or
 - (5) Such property is delivered directly to the purchaser at a point outside the city.

(Code 1975, § 9-12; Ord. No. 2134, 12-16-91; Ord. No. 2241, § 1, 3-29-93; Ord. No. 2362, §§ 6--13, 60, 1-9-95; Ord. No. 2405, § 1, 2-26-96; Ord. No. 2956, § 2, 8-22-06)

Sec. 26-390. Exempt transactions, commodities and persons.

This section sets forth the only exemptions from the city sales or use tax. The exemptions set forth in this section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the taxpayer to establish the applicability of an exemption by the presentation of clear and convincing evidence. The following are exempt from imposition of the city sales tax, use tax, or both, as the context sets forth:

- (1) *Athletic and health clubs.* The price paid for health/athletic club memberships, including initiation fees, dues and similar charges which relate solely to the use of a health/athletic club facility. This exemption shall not apply to any tangible personal property which is included in the membership price.
- (2) *Bad debts.* The amount of gross sales which are represented by accounts not secured by conditional sale contract or chattel mortgage 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 may be credited upon a subsequent payment of the tax in this Code. However, if any such accounts are collected by the taxpayer, the tax shall be paid upon the amount so collected, provided that such credit shall not be allowed with respect to any account or item therein arising from the sale of any article under a conditional sale contract, other title retention agreements for all or part of the purchase price or from the sale of any article when the seller takes a chattel mortgage on the tangible personal property to secure all or part of the purchase price.
- (3) *Constitutional preclusion from city sales and use tax.* All the sales, uses and other transactions which the city is prohibited from taxing under the Constitution and laws of the United States or under the Constitution of the State are exempt.
- (4) *Drugs dispensed in accordance with a prescription, medical supplies, prosthetic devices, and therapeutic devices.* The sale or purchase of drugs for human consumption only, dispensed in accordance with a prescription, being a written order by a licensed practitioner of the healing arts ordering any registered pharmacist to dispense drugs to a

specified individual or the administration of a drug as a part of a patient's treatment, and all sales of medical supplies, prosthetic devices, and therapeutic devices which are prescribed by a licensed practitioner of the healing arts.

- (5) *Factory-built residential structures.* Forty-eight percent of the purchase price of a factory-built residential structure, shall be exempt from taxation under this Code. For any subsequent sales of the factory built residential structure, the entire purchase price is exempt from taxation under this Code.
- (6) *Food.* Food purchased with food stamps shall be exempt. Food purchased with funds provided by the special supplemental food program for women, infants, and children as provided for in 42 USC 1786 shall also be exempt.
- (7) *Gasoline and cigarettes.*
 - a. Sales of gasoline. The purchase price paid or charged on commodities or motor fuel which has accrued or has been paid by the motor fuel tax prescribed by C.R.S. tit. 39, art. 27 (C.R.S. § 39-27-101 et seq.), as amended.
 - b. Sales of cigarettes. The sale or purchase of cigarettes.
- (8) *Golf course green fees.* Notwithstanding the requirements of Section 26-388(c), in the definition of recreation services, and Section 26-389(a)(18), golf course green fees shall be exempt from city sales tax. This exemption shall not apply to fees for miniature golf. Nothing in this subsection shall be deemed to exempt tangible personal property or food and beverages sold at retail in connection with any golf course operations.
- (9) *Infrequent sales at residences.* Infrequent sales of tangible personal property shall be exempt from the city sales tax, but only if the sale occurs at the residence of the owner, the property to be sold was originally purchased for use by members of the household where the sale is conducted, and no person other than such household members conducts all or any portion of the sale.
- (10) *Interstate commerce sales; shipment out of state.* The sales of tangible personal property shall be exempt from the operation of this Code if both the following conditions exist:
 - a. The sales are to those who reside or do business outside the state, and
 - b. The articles purchased are delivered to the purchaser outside the state with the seller's vehicle or by common, contract or commercial carrier, who is employed by the seller to effect delivery to the purchaser; provided, however, that the article so purchased and so delivered is to be used, stored, distributed and consumed outside the state.
- (11) *Intrastate sales.*
 - a. Automotive vehicles, mobile machinery or self-propelled construction equipment to nonresidents.
 1. The sale, but excluding rentals and leases, of automotive vehicles, or mobile machinery or self-propelled construction equipment if the sale meets all of the following conditions:
 - i. The purchaser is a bona fide nonresident of the city.
 - ii. The vehicle is registered or required to be registered outside the city under the laws of the state or is heavy equipment not required to be registered.

2. The exemption shall not include parts, repairs and parts, mounted equipment or any other item to be used for, or on, or attached, or affixed to the automotive vehicles, mobile machinery or self-propelled construction equipment subsequent to the initial sale.
- b. Deliveries to nonresident outside city. The sales of tangible personal property shall be exempt from the operation of this Code if both the following conditions exist:
1. The sales are to those who reside or do business outside the city, and
 2. The articles purchased are delivered to the purchaser outside the city with the seller's vehicle or by common, contract or commercial carrier who is employed by the seller to effect delivery to the purchaser; provided, however, that the article so purchased and so delivered is to be used, stored, distributed and consumed outside the city.
- (12) *Nonresident not liable for auto use tax on use in city.* The use or storage in the city of automotive vehicles is exempt if the owner:
- a. Is or was at the time of purchase a nonresident of the city; and
 - b. Purchased, titled, registered, and licensed the vehicle outside this city for use outside this city.
- (13) *Nontaxable service sales.* The amount equal to the consideration received for labor or services sold, if the consideration for such services is separately stated from the consideration received for the tangible personal property in the retail sale or that proportionate percentage approved by the city treasurer on combined sales of services and tangible personal property that is deductible as the service or labor portion of that total sale or the total amount paid on the sale or purchase of exclusively nontaxable services.
- (14) *Other deductions.*
- a. *Finance charges.* The amount paid by any purchaser as or in the nature of interest or finance charges on account of credit extended in connection with the sale of any tangible personal property if the interest or finance charges are separately stated from the consideration received for the tangible personal property transferred in the retail sale. Finance charges included in gross sales and services are deductible on the city sales tax return.
 - b. *Newspapers.* The amount paid or charged for newspapers. This does not include preprinted newspaper supplements.
 - c. *Cattle, sheep, etc.* The sale or purchase of neat, cattle, sheep, lambs, swine and goats and purchases or mares and stallions for breeding purposes; and all farm auction closeout sales.
 - d. *Sales to contractors who have prepaid the tax on a permit.* Sales to and purchases by contractors of construction materials which will be installed or incorporated into a structure or project on which a city building permit has been issued, provided that:
 1. The materials were included items in determining the valuation of the construction for purposes of issuance of the city building permit;
 2. The vendor records on the invoice of sale furnished to the contractor the job site address and city building permit number; and

3. The contractor has prepaid the city tax directly to the city, in accordance with Section 26-391(f)(1), on the estimated basis of 50 percent of the building or construction valuation upon the issuance of that permit.
- e. *Livestock feed, seeds and orchard trees.* The sale or purchase of livestock or poultry, all sales and purchases of seeds to grow food, and all sales and purchases of orchard trees when such purchases are used to grow food for resale.
- (15) *Payment of city sales tax.* The use, storage, distribution or consumption in the city of tangible personal property upon the sale of which the city retail sales tax at the rate imposed by Section 26-387(b) has been legally imposed, collected, and remitted is exempt from the levy of the city use tax.
- (16) *Payment of other municipality tax.* The use, storage, distribution or consumption in the city of tangible personal property and upon the sale of which a retail sales tax at a rate equal to or greater than the rate imposed by Section 26-387(b) has been legally imposed, collected and remitted to a municipal corporation organized and existing under the authority of the constitution of the state is exempt from the levy of city use tax. If the rate of retail sales tax paid to such municipal corporation is less than the rate imposed by Section 26-387(b), the net difference between the tax due under this Code and the tax computed at the rate of such other retail sales tax shall be paid to the city treasurer. This exemption shall not apply if a tax paid to another municipal corporation was not legally due under the laws of such municipal corporation or the laws of the municipal corporation are not compatible with those of the city as to specific taxation and exemption as applied to the transaction in question. City taxes collected on sales within the city, which are remitted to another taxing authority in error, are not legally imposed taxes. This exemption shall also be denied for subsequent transactions within the city, including but not limited to rentals and leases.
- (17) *Payment of other state's sales tax.* The use, storage, distribution or consumption in the city of tangible personal property and upon the sale of which any other state or any other state in combination with any subdivision thereof has legally imposed and collected a retail sales tax at a rate equal to or greater than the sum of the city's sales tax and all state-collected sales taxes in effect within the city on the purchase date is exempt from the levy of the city use tax. If the rate of retail sales tax paid to such other state and/or its political subdivisions is equal to or less than the sum of all state-collected sales taxes in effect within the city on the purchase date, the full city use tax at the rate imposed by Section 26-387(b) is due. If the rate of retail sales tax paid the other state and/or its political subdivision is more than the sum of all state-collected sales taxes in effect within the city on the purchase date, but less than the sum of the city's sales tax and all state-collected sales taxes in effect within the city on the purchase date, the city use tax will be due on the net difference between that tax paid in excess of the rate imposed by Section 26-387(b) and the sum of the city's sales tax and all state-collected taxes in effect within the city on the purchase date. In no instance will the city tax credit or charge exceed the rate imposed by Section 26-387(b). This exemption shall not apply if a tax paid another state and/or its subdivisions thereof was not legally due under the laws of such other state and its subdivisions or the laws of that state and/or its subdivisions are not compatible with those of the city as to specified taxation and exemption as applied to the transaction in question. This exemption shall also be denied for subsequent transactions within the city, including but not limited to rentals and leases.
- (18) *Purchase price including other direct taxes.* The city sales and use tax shall not apply to any direct tax legally imposed by this Code or by the federal government or by the state.
- (19) *Purchases prior to residency in city not taxable.* The use, storage, distribution or consumption of tangible personal property of a resident, if such personal property was purchased and used for a longer duration than one-third of its depreciable life, using the

straight line depreciation method, prior to the time the property was brought into the city, and if such property was used for the primary purpose for which it was acquired prior to the time it was brought into the city. This exemption does not apply to construction equipment since such construction equipment is fully taxed pursuant to 26-389(a)(5).

- (20) *Recreation services.* Recreation services provided on property owned by a political subdivision of the state, including the city, shall be exempt from the city sales tax. Nothing in this subsection shall be deemed to exempt tangible personal property or food and beverages sold at retail by such a political subdivision.
- (21) *Returned goods; discounts and allowances.*
- a. *Returned goods.* The amount equal to the sale price of property returned by the purchaser when the full sale price including the tax levied is refunded, either in cash or by credit.
- b. *Discounts and allowances.* The amount of discount from the original selling price if such discount or decrease in purchase price and the corresponding decrease in sales tax due is actually passed on to the consumer. An anticipated cash discount to be allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining gross taxable sales on any vendor's return prior to the date when the customer actually receives the discount. Any adjustments in sale price such as allowable discounts, rebates and credits cannot be anticipated, and the tax must be based upon the original price, unless such adjustments have actually been made prior to the filing of the return wherein such sale is reported, provided that, if the price upon which the tax was computed and paid to the city by the vendor is subsequently readjusted, prior to the payment of the tax by the purchaser, a proper credit may be taken against the tax due on the next subsequent return.
- (22) *Sales for taxable resale (wholesale).*
- a. *Component parts.* The purchase price paid or charged on the sales to and purchase of tangible personal property by a person engaged in manufacturing or compounding for use, profit or sale shall be deemed a wholesale sale when it meets all of the following conditions:
1. Is actually and factually transformed by the process of manufacture.
 2. Becomes by the manufacturing processes a necessary and recognizable ingredient, component and constituent part of the finished product.
 3. Its physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.
- b. *Exempt commercial packaging materials.* The sales of exempt commercial packaging material as defined in Section 26-388 is exempt under this subsection.
- c. *Newsprint; printer's ink.* The sales to and purchases of newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales.
- d. *To other licensed retailers.* The sale by wholesalers or retailers to a licensed retailer, jobber, dealer or other wholesaler for purposes of taxable resale, and not for the retailer's, jobber's, dealer's or wholesaler's own consumption, use, storage or distribution, shall be deemed to be wholesale sales.

(23) *Sales to and purchases by charitable organizations.* The price paid or charged on direct sales to and direct purchases by charitable organizations, in the conduct of their regular charitable capacities only.

a. Submission of information; definitions.

The exemption provision contained in this subsection does not grant an exempt status automatically. The finance director may require submittal of the following information:

- i. A copy of the organization's federal exemption letter.
- ii. The organization's financial statements showing the source of funds and its expenditures.
- iii. Copies of the organization's articles of incorporation, bylaws, and other organizational documents, copies of resolutions and minutes of the organization's governing body, and
- iv. Such other documents as may be needed to establish the organization's charitable purpose.

b. Sales to ministers, priests, rabbis or other employees, staff members, faculty and students of religious or charitable organizations for their personal use are not exempt from the sales and use tax.

c. Taxable goods or services sold by an entity which has been granted a City exempt license are subject to taxation; provided, however, charitable organizations holding an IRS exempt designation of 501(c)(3) and a valid State exemption certificate are exempt from collecting sales taxes during fundraising events so long as the following conditions are met:

- i. The number of such events does not exceed 12 during a calendar year,
- ii. The funds raised during such events are retained by the charitable organization to be used to further their charitable purpose,
- iii. The combined net proceeds of these events does not exceed \$25,000 in a calendar year,
- iv. For purposes of this subsection, the terms "net proceeds" shall mean total gross receipts, less expenses attributable to an event,
- v. Charitable organizations that reach or exceed \$25,000 in net proceeds for fundraising events that occur during a calendar year or who hold events that exceed 12 during a calendar year, are required to collect and remit sales taxes in accordance with Section 26-389.

d. Before the vendor may grant an exemption from the tax on the sale of any tangible personal property or taxable service, the vendor must be furnished with and must record the State exempt license number of the institution or organization seeking such a tax-free purchase. Such exempt license number is not a blanket authorization for total exemption, but only for exemption of activities specified by the city. Those purchases made by such organizations or institutions that are not specifically exempt must be reported for use tax purposes.

- e. Hospitals, nursing homes, etc., not meeting the charitable definition in Section 26-388(c), are subject to the use tax on all of their purchases of tangible personal property that are not resold, or if resold, the tax is not charged.
 - f. Only the governmental entities specifically cited in subsection (24) of this section are immune from the assessment of the sales and use tax on their purchase and use of tangible personal property and services in their governmental capacities only.
 - g. Schools or educational institutions which levy and are supported by tax revenues are exempt from tax under the government exemption, subject to the limitations set forth in subsection (24) of this section. Private schools are taxable on all their purchases of tangible personal property or taxable services unless an exempt City license has been granted.
 - h. All federal- or State-chartered banks are taxable, including national, state and industrial banks, on all of their purchases not for taxable resale and on all of their sales. The city sales and use taxes will be collected and remitted to this city on the amount paid by such banks on all their lease and rental payments as well as on all other purchases and uses from the effective date of this article.
 - i. [Reserved.]
- (24) *Sales to the federal government, the state and its subdivisions.* The purchase price paid or charged on direct sales to and direct purchases by the United States government and to the state, its departments or institutions and the political subdivisions thereof, including the city, in their governmental functions and activities only.
- (25) *Trade-ins for taxable resale.* The amount equal to the fair market value of any exchanged or traded-in property which is to be resold thereafter in the usual course of the retailer's business, if included in the full price of an article sold.
- (26) *Transient not liable on prior purchases.* The use, storage, distribution or consumption, while temporarily within this city, of tangible personal property brought into the city by a nonresident thereof for the nonresident's own personal use is exempt under this Code.

(Code 1975, § 9-13; Ord. No. 2134, 12-16-91; Ord. No. 2241, § 2, 3-29-93; Ord. No. 2362, §§ 14--34, 60, 1-9-95; Ord. No. 2405, § 2, 2-26-96; Ord. No. 2663, § 4, 4-23-01; Ord. No. 2956, § 3, 8-22-06; Ord. No. 3019, § 1, 12-18-07; Ord. No. 3265, § 2, 9-24-13)

Sec. 26-391. Licenses, proof of exemption; responsibilities of taxpayers.

- (a) *Licenses.* It shall be unlawful for any business to exercise any privilege subject to the city sales or use tax without first obtaining a sales and use tax business license, which license shall be granted and issued by the city treasurer, pursuant to Section 26-391(r), and shall be in force and effect until cancellation by the taxpayer or city, unless sooner revoked.
- (b) *Exemption; burden of proof.* The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying city tax upon any goods sold or purchased, paying the tax to the city treasurer or from making and remitting the appropriate tax returns shall be on the vendor, retailer, consumer or purchaser by the presentation of clear and convincing evidence.
- (c) *Reports and records.* The city treasurer may require any person, by regulation or notice served on such person, to make such return, render such statement or keep and furnish such records or make such information reports as the city treasurer may deem sufficient to show whether or not such person is liable under this Code for payment or collection of the tax imposed in this Code.

- (d) *Vendor responsibility for collection of and remittance of tax.*
- (1) *Collection of tax.* Every retailer or vendor engaged in business or selling at retail, as such are defined in this Code, shall, irrespective of the provisions of Section 26-387, be liable and responsible for the payment of taxes in the amount yielded by applying the rate imposed by Section 26-387(b) to all taxable sales made by such retailer or vendor of commodities or services as specified in Section 26-389.
 - (2) *Remittance.* Every retailer or vendor engaged in business as defined in this Code, shall file a tax return with the city treasurer on or before the 20th day of the month following each designated (monthly, quarterly or annual) reporting period. Every retailer or vendor not engaged in business in the city as defined in this Code, but who collects city tax shall remit the tax collected to the city treasurer on or before the 20th day of the month following collection.
 - (3) *Calculation of tax.* The amount of taxes required to be paid with the tax return is calculated by applying the rate imposed by Section 26-387(b) to taxable sales, adding any excess tax amounts as provided in subsection (l) of this section, and subtracting three percent of the calculated tax, up to a maximum of \$25.00 per reporting period. The three percent tax reduction or "vendor's fee" is not allowed on any return that is not timely filed or for which the tax amount is not timely paid.
- (e) *Exempt institutions.* No organization may purchase tax free in the city or use in the city tangible personal property or taxable services tax free unless:
- (1) *Application for exempt license.* That organization applies for a City exempt license number, which license number shall be furnished by the organization to any vendor prior to the allowance of a purchase tax free.
 - (2) *Exempt organization audit.* Any exempt organization may be subject to audit as would be any other business or consumer in the city.
- (f) *Contractors, owners or lessees of realty; methods of paying use tax when construction permit required.* Every contractor who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure or improvement to real property, and who shall purchase lumber, fixtures or any other construction materials and supplies used and every owner or lessee of realty located in the city upon which any improvements have been or will be made or upon which any articles of tangible personal property are or will be attached, shall pay the city use tax as follows:
- (1) *Payment on estimated basis.* By paying a permit use tax deposit based on a percentage of the total valuation of the construction contract and paid, either through the owner, lessee or the general contractor, or separately, if such contractor is a subcontractor electing to do so, at the time a building permit is issued.
 - (2) *Taxes for construction materials and prefabricated goods and materials.* Taxes for all purchases of construction materials and prefabricated goods and materials shall be satisfied in full. The owner of the property for which such materials were purchased shall be ultimately responsible for any city use taxes that are not properly paid by contractors. Records supporting such construction use tax payments and all related construction records are subject to review by the city treasurer in accordance with Section 26-392(c). Any overpayment of an estimated construction use tax shall be subject to refund in accordance with Section 26-396(i).
- (g) *City business consumer; method of payment.* Every person who operates or maintains in this city a business, as defined in Section 26-388, and who purchases, leases or rents tangible personal property and taxable services for use, storage, distribution or consumption in the city in connection with such business from sources within or without the city and taxable under this

Code and who has not paid the city sales and use tax imposed in this Code to a vendor required or authorized to collect the tax shall, under the authority vested in the city treasurer in subsection (a) of this section and throughout this Code, be required to secure a city consumer use tax license through application procedures set forth in this Code; and monthly, or on a reporting basis agreed to by the city treasurer, but no less often than annually on a calendar year basis, make a return and pay the tax due, if any, to the city on or before the 20th day of the month following the preceding month or months under report. Subsection (q) of this section shall govern as to frequency of the filing of these mandatory reports.

(h) *New business purchases; sellers and purchasers.*

(1) *Acquisition of business.* The city tax shall be remitted on the price paid for tangible personal property which is acquired with the purchase of a business and for use in the operation of such business. The tax shall be based on the price paid for such chattels 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 that the valuation is as great or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump sum transaction, the tax shall be paid on the book value set up 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.

(2) *Purchaser liable for prior owner's unpaid tax.* Purchasers of a business are liable for any unpaid tax of a predecessor. Vendors or consumers having outstanding accounts on which the sales or use tax has not been remitted must compute and pay the tax at the time of the sale.

(3) *Agent of seller and seller liable for tax.* The taxpayer shall report such tax on the city consumer use tax return as prescribed. The seller or the seller's agent will be held liable for sales and use tax remittance on the sale of the business. In the event that the seller fails to collect and remit the tax due on the purchase, the purchaser will be held liable for payment of use tax on the purchase.

(i) *Individual consumer use tax payment.* Every resident of the city who purchases, leases or rents tangible personal property and taxable services for use, storage, distribution or consumption in the city from sources within or without the city, and taxable under this Code, and who has not paid the tax imposed by this Code thereon to a vendor required or authorized to collect the tax shall file a city consumer use tax return and pay the tax due to the city on or before the 20th day of the month for the preceding month or months under report from the purchase, lease or rental of such tangible personal property and taxable services.

(j) *Purchasers of automotive vehicles, mobile machinery or self-propelled construction equipment.* Any resident of the city who purchases any automotive vehicle, mobile machinery or self-propelled construction equipment as defined in Section 26-388 for use within the city, and who has not paid the tax imposed by this Code to a vendor required or authorized to collect the tax shall pay the city tax due to the county clerk at the time the automotive vehicle, mobile machinery, or self-propelled construction equipment is registered.

(k) *Tax on credit sales, etc.* Whenever tangible personal property is sold, including that sold in conjunction with the sale of a business, which is taxable under this Code, under a conditional sales contract or purchase contract whereby the seller retains title as security for all or part of the purchase price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. The tax shall be charged or collected and remitted by the vendor. No refund or credit shall be allowed to either party to the transaction in case of repossession.

- (l) *Excess collections; failure to remit collections.* If any vendor shall during any reporting period collect any excess city tax amounts, the vendor shall remit to the city the full net amount of the tax imposed in this Code, together with such excess city tax amounts. If it is not possible to determine to whom the excess tax is due, the vendor shall remit one-half of such excess tax to the city and one-half of such excess tax to the state. The retention by the vendor of any excess tax amounts or the intentional failure to remit punctually to the city the full amount required to be remitted by the provisions of this Code is a violation of this Code.
- (m) *Unlawful to advertise absorption of tax.* It shall be unlawful for any taxpayer or vendor to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Code will be assumed or absorbed by the vendor or taxpayer or that it will not be added to the selling price of the property sold or, if added, that it or any part thereof will be refunded.
- (n) *Special accounting for alcoholic beverage sales by the drink, vending machine sales of tangible personal property, recreation services, cover or door charges, or admission ticket sales.* Any retailer selling these goods or services may include in the sales price the tax levied under this section, provided that no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in subsection (d) of this section. Also, any vending device operator selling tangible personal property through vending devices, any vendor who sells recreation services or who sells admission tickets, and any vendor who imposes any cover or door charge may include in the sales price the tax levied under this section, with the same provisions as provided above.
- (o) *Special accounting for combined sales of services and personal property.* Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer or purchaser consists of the supply of tangible personal property and services in connection with the maintenance or servicing of such shall be required to pay the tax levied under this Code upon the full contract price, unless application is made to the city treasurer for permission to use a percentage basis for reporting the tangible personal property sold and the labor or services supplied under such contract. The city treasurer is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under such combination contract or sale which shall be subject to the tax levied pursuant to the provisions of this Code. This subsection shall not be construed to include terms upon which the tax is imposed on the full purchase price, as defined in Section 26-388, nor shall it be construed as an allowance for the vendor to fail to itemize to the customer the taxable and nontaxable portions of the bill.
- (p) *Special accounting for sales tax collections by nonresident vendors.* Every retailer or vendor engaged in business in this city, as such is defined in Section 26-388, and making sales, even though not maintaining an office in this city, of tangible personal property or taxable services subject to the sales tax must, in accordance with this Code, collect and remit the sales tax on such sales in like manner as a retailer or vendor maintaining an office in this city. If the nonresident vendor petitions the city treasurer, stating that the imposition of the tax on an individual sales basis will impose an unnecessary hardship, and if the type and occasion of sale so warrants, the city treasurer may accept payment of that vendor's tax liability on regularly audited and reasonable estimated payment basis. This estimated payment will be based on a calculation of the city sales tax liability as it bears to the vendor's aggregate gross sales and service.
- (q) *Tax return contents, consolidation, reporting periods.*
 - (1) *Tax return contents, form.* The returns to be filed by the taxpayer or the taxpayer's duly authorized agent shall contain such information and shall be completed in such manner and upon such forms as the city treasurer may prescribe.

- (2) *Consolidation of returns.* A vendor doing business in two or more places or locations, inside the city, and collecting taxes under this Code may be allowed to file one return covering all locations provided the business applies for and receives permission to file consolidated returns. The return must be accompanied by a supplemental report showing the gross sales and service and net taxable sales and service and taxes collected for each location. Failure to provide the required supplemental report with each tax return may result in revocation of this privilege.
 - (3) *Reporting periods.* If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of business or other conditions are such that the returns made on a calendar month basis will impose unnecessary hardship, the city treasurer may, upon request of the vendor or licensed consumer, accept returns at such intervals as will, in the city treasurer's opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. The city treasurer may, by rule, permit a vendor or licensed consumer whose monthly tax collected is less than \$40.00 to make returns and pay taxes at intervals not greater than three months or as approved by the city treasurer.
- (r) *Sales and use tax business license.*
- (1) *Application.* City sales and use tax business licenses shall be granted only upon approval of an application. The application must contain the name and address of the person desiring such license, the name of such business and the nature thereof, the location, including the street number of such business and such other facts as may be required by the city treasurer. Approval of a tax business license shall be conditioned upon the applicant's proposed business and location meeting all applicable provisions of the Thornton City Code. The applicant may appeal a denial by submitting a written request to the city treasurer within 20 days of the notice of denial. The city treasurer will consider the appeal and provide the applicant with a written final decision.
 - (2) *Licensing of each retail establishment.* In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required; however, filing of consolidated tax returns may be allowed for those various locations as set forth in subsection (q) of this section.
 - (3) *Form of license; transferability.* Each license shall be numbered and shall show the name, business address and nature of business of the licensee and shall be posted in a conspicuous location in the place of business for which it is issued. No license shall be transferable.
 - (4) *Revocation by city treasurer.* The city treasurer may, upon written notice and after providing the taxpayer an opportunity to request a hearing revoke the license of any person found by the city treasurer to have violated any provision of this Code or any city ordinance. After revocation of the license, no further business, as defined in this Code, may be conducted within the city, and the city attorney shall institute such legal action as may be necessary to preclude such conduct of a business.
 - (5) *Appeal from revocation.* Any finding and order of the city treasurer revoking the license of any person may be appealed. If appealed, the revocation shall be subject to judicial review in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
 - (6) *Sale or transfer of business.* Any sale, transfer or purchase of an interest in a business enterprise by any person, where the respective interest of the person purchasing or selling, as a result of the transaction, has changed in any degree, requires, the issuance of a new license. In all cases where any of the assets of any new business are within the city, payment of use tax is required on transfer of title or possession, or both, of the tangible personal property taxable in this Code, whether involving a retail establishment or any other type of business.

- (s) *Method of payment.* The city treasurer shall have the discretion to enter into any agreement with taxpayers to allow for payment of required taxes on an installment basis when such a method would be equitable for the taxpayer and the city.

(Code 1975, § 9-14; Ord. No. 2134, 12-16-91; Ord. No. 2362, §§ 35--46, 60, 1-9-95; Ord. No. 2866, § 1, 11-23-04; Ord. No. 2956, § 4, 8-22-06; Ord. No. 3103, 8-11-09; Ord. No. 3138, § 2, 7-13-10; Ord. No. 3265, § 3, 9-24-13)

Sec. 26-392. Administration.

- (a) *Finance director; city treasurer.* Under this Code, responsibilities of the finance department and city treasurer are as follows:

- (1) The finance director is given responsibility for administration and implementation of this Code under the direction of the city manager.
- (2) The city treasurer, with the approval of the city manager, shall adopt rules and regulations to aid in the administration and interpretation of this Code.

- (b) *Duties and powers of city treasurer.*

- (1) *Administration of Code.* In order to effectuate the purposes of this Code, the city treasurer, under the direction of the city manager, shall prescribe necessary forms for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof and to permit uniform methods of adding the tax or the average equivalent thereof to the purchase price. The city treasurer shall have power and authority to amend or rescind such rules and regulations adopted pursuant to subsection (a)(2) of this section not inconsistent with the provisions of this Code. For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the city treasurer shall have the power to examine or cause to be examined any books, papers, records or memoranda bearing upon the matters required to be included in the return.
- (2) *City treasurer's appointment of employees and examination of returns.* The city treasurer shall appoint such persons to make such expenditures, require such reports, make such investigations and take such other action as the city treasurer deems necessary or suitable to that end. The city treasurer shall determine such organization and methods of procedure in accordance with the provisions of this Code. Subject to the provisions of this Code, the city treasurer is authorized to appoint and prescribe the duties and powers of such officers, accountants, experts and other persons as may be necessary in the performance of this duty. The city treasurer may delegate to any such person so appointed such power and authority as the city treasurer deems reasonable and proper for the effective administration of this Code and, in the discretion of the city treasurer, shall bond, in a sufficient amount, any person handling money under this Code.

- (c) *Books and records required of taxpayer.*

- (1) *Taxpayer's retention of records.* It shall be the duty of every person liable to the city for any tax imposed under this Code to keep and preserve for a minimum of three years such books, accounts and records as may be necessary to determine the amount of such tax liability. Any person who is required to be licensed under Section 26-391, but who has failed to obtain such license shall provide, upon request by the city treasurer, books and records dating back to the time such person began engaging in business in the city.
- (2) *Availability of records to city treasurer.* All such books, accounts and records shall be open for examination at any time by the city treasurer. If such person keeps or maintains such person's books, accounts and other records or any thereof outside the state, upon demand by the city treasurer such person shall make such available at a suitable place within the state, to be designated by the city treasurer, for examination, inspection and

audit by the city treasurer. The city treasurer, in the discretion of the city treasurer, may make, permit or cause to be made the examination, inspection or audit of books, accounts and other records so kept or maintained by such person outside the state at the place where such are kept or maintained or at any place outside the state where such will be made available, provided that such person shall have entered into a binding agreement with the city to reimburse the city for all costs and expenses incurred by the city in order to have such examination, inspection or audit made in such place.

- (3) *Subpoena to appear.* If any taxpayer refuses voluntarily to furnish any of the information required in subsection (c)(1) of this section, the city treasurer, by subpoena issued under the city treasurer's hand, may require the appearance of the taxpayer and the production by the taxpayer of any such information in the taxpayer's possession and may administer an oath to the taxpayer and take the taxpayer's testimony. If the taxpayer fails or refuses to respond to the subpoena and give testimony, the city treasurer may apply to the Thornton Municipal Court Judge for an order to show cause against such taxpayer to show why such taxpayer should not be held in contempt for failure to respond to the subpoena. Upon a hearing, the judge shall have, for the purpose of enforcing obedience to the requirements of the subpoena, power to make such order as, in the judge's discretion, the judge deems consistent with the law for punishment of contempt.
 - (4) *Subpoena to obtain records.* If the city treasurer is unable to secure from the taxpayer information relating to the accuracy of the taxpayer's return or the amount of the income of the taxpayer, the city treasurer may apply to the Thornton Municipal Court Judge for the issuance of subpoenas to such other persons as the city treasurer believes may have knowledge in any way related to the taxpayer's business, and upon making a showing satisfactory to the court that the taxpayer cannot be found or evades service of subpoena or fails or refuses to produce records or give testimony, the judge shall have power to cause the issuance of subpoenas under the seal of the court to the person sought to be so summoned requiring appearance before the city treasurer and requiring testimony related to the taxpayer's returns or income. When such persons so served with subpoena shall fail to respond thereto, the judge may proceed against such persons as in cases of contempt.
- (d) *Preservation of tax reports and returns.*
- (1) *City's preservation of records.* All reports and returns of taxes received by the finance director covered by this Code shall be preserved for three years and thereafter until the city treasurer orders them to be destroyed.
 - (2) *Confidential nature of returns.* Except in accordance with judicial order or as otherwise provided by law, the city treasurer shall not divulge or make known in any way any information disclosed in any document, report or return filed in connection with any of the taxes covered by this Code. The officials charged with the custody of such 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 treasurer in an action or proceeding under the provisions of any such taxing statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.
 - (3) *Taxpayer records.* Nothing in this section shall be construed to prohibit the delivery to a person or a person's duly authorized representative of a copy of any return or report filed in connection with such person's tax, and such copies may be certified by the city treasurer and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.

- (4) *Publication of statistics; returns available to city attorney.* 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.
- (5) *Records available to authorized parties.* Notwithstanding the provisions of this section, the city treasurer, in the discretion of the city treasurer, may furnish to the taxing officials of any other state and its political subdivisions and to the United States any information contained in tax returns and related schedules and documents filed pursuant to this Code or in the report of an audit or investigation made with respect thereto, provided that such jurisdiction enters into an agreement with the city treasurer to grant similar privileges to the city and, provided further, that such information is to be used only for tax purposes.
- (e) *Employees' restrictions.* It shall be unlawful for any officer or employee of the city engaged in any administration which is governed by this Code to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person holding a city sales tax license for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the city, by the state, by any other state or by the United States government or to accept any employment for the purpose of advising, preparing materials or data or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by any city of the state, by the state, any other state or its political subdivisions or by the United States government.
- (f) *Map of municipal boundaries.* The city sales tax office shall make available to any requesting vendor a map showing the boundaries of the city. The requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available.
- (g) *Standard reporting form.* The city shall use the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the executive director of the state department of revenue by the first full month commencing 120 days after the effective date of the regulation adopting or revising such standard form.

(Code 1975, § 9-15; Ord. No. 2134, 12-16-91; Ord. No. 2362, § 47, 1-9-95; Ord. No. 2663, § 5, 4-23-01; Ord. No. 2956, § 5, 8-22-06)

Sec. 26-393. Estimated taxes, penalties, and interest.

- (a) *Assessment to recover unpaid taxes, penalties, and interest.* If a person required to file returns and pay the taxes imposed by this Code fails to file accurate tax returns or fails to remit the correct amount of taxes, the city treasurer, on such information as is available, shall issue to the taxpayer a written notice of assessment stating the amount of the tax, penalty and interest due. The assessed amount shall be due and payable within 30 calendar days after the date of such notice.
- (b) *Failure to file tax return; failure to pay tax; deficiency due to negligence.* If any person, taxpayer or vendor fails, neglects or refuses to collect the tax or to file a return and pay the tax as required by this Code or should fail to remit the proper amount of tax, which constitutes a deficiency, penalties and interests shall be added to such tax and imposed in accordance with the following provisions.
 - (1) When a tax deficiency exists from underreporting, mathematical errors, failure to file a return, or failure to pay tax due to negligence or a knowing, intentional disregard of the filing and payment requirements of the city, but without intent to defraud, penalty and interest shall be assessed as follows:

- a. The sales tax penalty shall be \$150.00 or ten percent of the deficiency, whichever is greater, and interest shall be at the rate imposed under subsection (b)(2) of this section per month from the date when due, not exceeding 18 percent per annum.
 - b. The use tax penalty shall be \$150.00 or ten percent of the deficiency, whichever is greater, and interest shall be at the rate imposed under subsection (b)(2) of this section per month from the date due.
 - c. The penalty for failure to file a timely return when there is no tax due is \$15.00.
 - d. When such person, taxpayer or vendor fails to collect the tax or file a return and remit the amount due three or more times during any three consecutive calendar years, the sales and use tax penalty shall be \$150.00 or 15 percent of the deficiency, whichever is greater, and interest shall be at the rate imposed under subsection (b)(2) of this section, per month from the date when due, not exceeding 18 percent per annum.
- (2) The annual rate of interest assessed pursuant to this section shall be the rate established by the state commissioner of banking pursuant to C.R.S. § 39-21-110.5.
- (c) *Mathematical error on tax returns.* In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the city shall notify the taxpayer by written assessment of the amount of tax in excess of that shown in the return which is due and has been assessed. The taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within 30 calendar days from such assessment.
- (d) *Deficiency due to fraud.* If any taxpayer or vendor fails to file a return or pay the tax on any return required under this Code on the date prescribed, as determined by the Code, and such taxpayer or vendor has been found to have violated Section 26-394 herein, there shall be added 100 percent of the total amount of the deficiency, and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable 30 calendar days after written notice of final determination, assessment and demand for payment by the city treasurer, and an additional three percent per month on such amount shall be added from the date the tax was due until paid.
- (e) *Waiver of penalty or interest; credit; limitation.* The city treasurer is authorized to waive, for good cause shown, any penalty assessed by this Code, and any interest imposed in excess of six percent per annum shall be deemed a penalty.
- (1) *Interest assessment.* Interest prescribed under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.
 - (2) *No interest assessed on credit.* If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.
 - (3) *Interest assessment period.* Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.
- (f) *Collection fee.* The finance director may add to the outstanding tax due by any taxpayer, a collection fee equal to the amount charged by any collection agency hired by the finance director to collect delinquent taxes owed by the taxpayer.

- (g) *Estimated audit assessment.* If the city treasurer is unable to audit the records of a taxpayer, either due to the taxpayer's failure or refusal to provide sufficient records necessary to complete the audit, the city treasurer shall make an estimate of tax due based upon or reasonably inferred from such information as may be available and shall issue an estimated notice of final determination, assessment and demand for payment as provided herein.

(Code 1975, § 9-16; Ord. No. 2134, 12-16-91; Ord. No. 2362, §§ 48, 49, 1-9-95; Ord. No. 2663, § 6, 4-23-01; Ord. No. 2866, § 2, 11-23-04; Ord. No. 2956, § 6, 8-22-06; Ord. No. 3135, § 1, 7-13-10; Ord. No. 3265, § 4, 9-23-13)

Sec. 26-394. Evasion of tax; violations and penalties.

- (a) *Evasion and avoidance of tax.* It shall be unlawful for any retailer, vendor, consumer, purchaser or any other person subject to the tax levied by this Code to refuse to make any return provided to be made by this Code; to make any false or fraudulent return; to make any false statements in any return; to fail or refuse to make payment to the city treasurer of any taxes collected or due the city; or in any manner to evade the collection and payment of the tax or any part thereof imposed by this Code. It shall be unlawful for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof or to aid or abet another in any attempt to evade the payment of the tax imposed by this Code. It shall also be unlawful for any person to make a false return or to file a return containing a false statement.
- (b) *Fine and imprisonment.* Any person who is found to have violated any of the provisions of this Code shall be punished as provided in Section 1-8(b). If any such person is an employee or officer of the city, such violation shall be grounds for dismissal from office or employment.
- (c) *Separate violations.* Each and every 24-hour continuation of any acts constituting a violation shall be a distinct and separate offense.

(Code 1975, § 9-22; Ord. No. 2134, 12-16-91; Ord. No. 2362, § 57, 1-9-95; Ord. No. 2956, § 7, 8-22-06)

Sec. 26-395. Overpayments; erroneous refunds.

- (a) *Interest allowance.* Interest shall not be allowed and paid upon any overpayment in respect of any sales or use tax.
- (b) *Refund erroneously made to bear interest.* Any portion of a sales or use tax or any interest, assessable penalty, additional amount or addition to tax which has been erroneously refunded shall bear interest at the rate established under Section 26-393(b)(2) of this Chapter 26, from the date of the payment of the refund.

(Code 1975, § 9-17; Ord. No. 2134, 12-16-91; Ord. No. 2956, § 8, 8-22-06)

Sec. 26-396. Refunds.

- (a) *Assignability.* The right of any person to a refund under this Code shall not be assignable, and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof, except as provided in subsection (i) of this section.
- (b) *Burden of proof of exemption.* The burden of proving that sales, services and commodities on which tax refunds are claimed are exempt from taxation under Section 26-390 or were not at retail shall be on the one making such claim by the presentation of clear and convincing evidence.
- (c) *Disputed tax.* Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempted from taxation under this Code, nevertheless, the seller shall collect and the purchaser shall pay the tax, and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the city treasurer, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

- (d) *Allowed if exempt.* A refund shall be made or a credit allowed for the tax so paid under dispute by any purchaser who has an exemption as provided in this Code. Such refund shall be made by the city treasurer after compliance with the following conditions precedent. Applications for refund must be made within 60 days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller and must be made upon such forms as shall be prescribed and furnished by the city treasurer, which forms shall contain such information as the city treasurer shall prescribe.
- (e) *Disallowed.* Upon receipt of such application, the city treasurer shall examine the application with all due speed and shall give written notice to the applicant of the decision thereon. Protest of a denial of refund and request for hearing as provided in Section 26-397 shall be submitted in writing to the city treasurer within 30 calendar days after the date of the notice denying the refund and shall identify the amount of the refund requested and the basis for the protest. The decision made based upon that hearing may be appealed pursuant to Section 26-398 of this Code.
- (f) *Payment.* If the city treasurer discovers from the examination of a return within the time periods provided for the filing of refunds or upon claim duly filed by the taxpayer or upon final judgment of a court that the tax, penalty or interest paid by any taxpayer is in excess of the amount due or has been illegally or erroneously collected, the city treasurer shall rule in favor of the taxpayer for refund of such illegally collected tax, penalty or interest, regardless of whether or not such sum was paid under protest. The city treasurer shall issue a warrant for the payment to the taxpayer out of the reserve of the appropriate city fund, provided that the city treasurer shall keep in the city treasurer's files a duplicate of the voucher and also a statement which shall set forth the reason why such refund shall have been ordered.
- (g) *Offset of previous tax due.* Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax imposed by this Code and that there is an unpaid balance of tax and interest accrued, according to the records of the city treasurer, owing by a taxpayer for any other period, the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance shall be credited thereto and any excess of the overpayment shall be refunded.
- (h) *Special refund for undercollection; retailer overpayment of taxes.* If any retailer can demonstrate to the reasonable satisfaction of the city treasurer that consistent, diligent application and adherence by the retailer of the bracket system rates results in actual undercollection of the sales tax by the retailer, the city treasurer is authorized to allow the retailer a refund of such undercollection as the city treasurer may determine.
- (i) *Special refund for estimated payment basis; contractor overpayment of taxes.* Application for refund by contractors prepaying on the estimated percentage payment basis under Section 26-391(f) shall be made within 18 months after the date of purchase and shall be made on forms prescribed and furnished by the city treasurer, which forms shall contain, in addition to the foregoing information, such pertinent data as the city treasurer shall prescribe.
- (j) *Special refund to United States and the State.* The foregoing notwithstanding, however, applications for refunds submitted by the United States Government, the state, its departments or institutions and the political subdivisions thereof, including the city, shall be submitted within 18 months after purchase of the tangible personal property purchased by any person furnishing work and materials under contract with such governmental units on any of their properties located within corporate limits of the city.
- (k) *False or fraudulent refund claim.* It shall be unlawful for any person who has submitted an application for a refund under the provisions of this section to make any false statement in connection with a claim for refund of any taxes.

- (l) *Action to recover fraudulent claims.* If any person is convicted under the provisions of this section, such convictions shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the city treasurer is empowered and directed to bring appropriate action for recovery of such refunds.
- (m) *Taxes paid in error.* An application for refund of sales or use taxes paid in error or by mistake shall be made within three years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed and must be supported by documentation as prescribed by the city treasurer.
- (n) *Wood burning conversion tax refund.* Persons who convert from a solid fuel fired heating device to natural gas logs or a natural gas fireplace or to a department of health certified solid fuel burning device that meets the current emissions standards under Regulation 4 of the state Air Quality Control Commission or certified pellet stoves or inserts will be eligible for a municipal sales tax and/or use tax refund on the materials and equipment needed for the conversion. Prior to a refund being granted by the city, sufficient documentation evidencing the purchase of the conversion materials and a copy of a letter of compliance issued by the city's building inspection division verifying installation must be provided to the revenue division.

(Code 1975, § 9-18; Ord. No. 2134, 12-16-91; Ord. No. 2195, § 1, 9-28-92; Ord. No. 2362, §§ 50, 51, 1-9-95; Ord. No. 2375, § 2, 6-26-95; Ord. No. 2956, § 9, 8-22-06; Ord. No. 3135, § 2, 7-13-10; Ord. No. 3265, § 5, 9-24-13)

Sec. 26-397. Hearings.

- (a) *Request for hearing; protest.* A taxpayer may request a hearing when the city asserts that taxes and any penalties or interest under Section 26-393 are due, as stated in a notice of final determination, assessment and demand for payment sent to the taxpayer by the city or when the city denies a taxpayer's claim for refund. The hearing request shall be in writing and shall set forth in detail the factual and legal basis for the taxpayer's assertion that the assessment or denial of refund is incorrect. The hearing request shall be received by the city treasurer within 30 calendar days after the date of the notice of final determination, assessment and demand for payment or of a notice of a denial of refund. Failure of the request to conform to the requirements stated herein shall result in the request being rejected and returned to the taxpayer. A taxpayer's failure to timely or properly submit a request for a hearing shall constitute a failure to exhaust local remedies. Any unprotested tax, penalty and interest shall be paid in full within the 30-day period specified in this subsection.
- (b) *Informal conferences.* Upon receipt of a request for hearing, the city may contact the taxpayer or the taxpayer's authorized representative to schedule an informal conference to discuss the procedure to be followed in the administrative hearing, to clarify the relevant issues and facts, and, if possible, to settle the matters in dispute. Participation in the informal conference does not waive any of the taxpayer's or the city's rights under this section.
- (c) *Hearing time and place.* The city treasurer shall notify the taxpayer in writing of the time and place for the administrative hearing within 30 days of receipt of the taxpayer's request for a hearing unless the taxpayer and the city treasurer agree in writing to waive the administrative hearing. Such notification of hearing shall be mailed no less than 20 days prior to the date of the hearing. In all cases, the hearing shall be held in the city at the office of the city treasurer. A final decision thereon shall be issued and the results mailed to the taxpayer within 180 days after the date of the taxpayer's request for a hearing, or within such further time as the taxpayer and local government may agree upon in writing.
- (d) *Procedures.* Hearings before the city treasurer shall be conducted in an informal manner. Formal rules of evidence shall not apply and transcripts or filing of briefs will not be required. However, the city will supply the taxpayer or representative a procedure booklet entitled "Rules Governing Hearings Before the City Treasurer," which outlines the procedural rules that shall be followed at the hearing. Such rules and procedures may be amended periodically by the city treasurer.

- (e) *Exhaustion of local remedies.* If an administrative hearing is scheduled by the city treasurer and the taxpayer fails to appear for the hearing, such failure shall constitute a failure by the taxpayer to exhaust local remedies. Once a taxpayer has protested a notice of final determination, assessment and demand for payment but elects to pay the assessment in lieu of proceeding to a protest hearing, such taxpayer shall be deemed to have exhausted local remedies and cannot subsequently submit an application for a refund of amounts paid under the notice of final determination.
- (f) *Conduct of hearing.* The hearing shall be held before the city treasurer. The city treasurer is authorized to appoint a hearing officer to serve in place of the city treasurer to take testimony and render a decision. At the hearing, the taxpayer may assert any facts, make any arguments and may elect to file any briefs and affidavits the taxpayer believes pertinent to the taxpayer's cause. If the taxpayer elects to file a brief, the city treasurer may also elect to file a brief.
- (g) *Request for hearing; time limitation.* After the expiration of 30 calendar days from the date of the notice of final determination, assessment and demand for payment or denial of refund, if the tax has not been paid and if no request for hearing has been timely filed, the notice of final determination, assessment and demand for payment previously mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalties, or shall constitute a final denial of refund. The assessed amount is due and payable immediately after the expiration of 30 calendar days from the date of the notice unless appeal was timely filed pursuant to Section 26-398.
- (h) *Adjustment of tax under question.* Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions at any hearing, the city treasurer may modify or abate in full any tax, penalty and interest questioned at the hearing or may approve a refund or may uphold the original assessment.
- (i) *Determination notices.* Upon rejection, in whole or in part, of a claim for refund, or upon a finding by the city treasurer or the appointed hearing officer that a valid sales or use tax assessment, in whole or in part, has been made against the taxpayer, the city treasurer or the appointed hearing officer shall send a final determination notice to the taxpayer setting forth the amount of the claim for refund that is denied or the amount of sales and use taxes found still due and owing, stating the grounds for such determination. Unless an appeal is taken as provided in Section 26-398, the taxes, together with interest thereon and penalties, if any, shall be paid within 30 days after the date of the final determination notice.
- (j) *License revocation.* A hearing on the revocation of a city sales and use tax license shall be held upon reasonable notice to the taxpayer by the city treasurer. The hearing shall be before the city treasurer or the appointed hearing officer. The final determination made by the city treasurer or the appointed hearing officer pursuant to the hearing shall be subject to appeal as prescribed in Section 26-398.

(Code 1975, § 9-19; Ord. No. 2134, 12-16-91; Ord. No. 2362, § 52, 1-9-95; Ord. No. 2956, § 10, 8-22-06; Ord. No. 3135, § 3, 7-13-10; Ord. No. 3172, § 1, 7-26-11; Ord. No. 3265, § 6, 9-24-13)

Sec. 26-398. Appeals.

- (a) *Authority of taxpayer.* The taxpayer may appeal a final hearing determination notice issued by the city treasurer pursuant to Section 26-397, in the manner prescribed by state law.
- (b) *Venue.* Venue and jurisdiction to hear and determine appeals is conferred on the County District Court.
- (c) *Review of proceedings.* The district court of the county shall have original jurisdiction to review the proceedings, such review being conducted after the final determination by the city treasurer in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

- (d) *Filing of bond.* Within 15 days after filing of the notice of appeal, the taxpayer shall file with the district court a bond in twice the amount of the taxes, interest and other charges stated which are contested on appeal, provided that the taxpayer may at the taxpayer's option deposit the disputed amount with the city treasurer in lieu of posting 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 or when the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the city treasurer and applied against the deficiency or returned in whole or in part to the taxpayer, with interest calculated on the tax portion of the amount so deposited at the rate earned by the City's pooled investments during the time the deficiency was held in escrow by the city. No claim for refund of amount so deposited with the city treasurer need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.
- (e) *Cases other than license revocation.* In all cases other than license revocation, taxpayer may choose to appeal the hearing determination notice of the city treasurer pursuant to C.R.S. § 29-2-106.1.

(Code 1975, § 9-20; Ord. No. 2134, 12-16-91; Ord. No. 2362, §§ 53, 60, 1-9-95; Ord. No. 2956, § 11, 8-22-06; Ord. No. 3172, § 2, 7-26-11; Ord. No. 3265, § 7, 9-24-13)

Sec. 26-399. Lien; assessments; collection.

- (a) *Lien.* The sales and use tax shall be a first and prior lien on the tangible personal property sold, purchased, stored, used, distributed or consumed, subject only to valid mortgage or other liens of record on and prior to the recording of notice as required by subsection (e) of this section, and when such tax is collected by retailers or agents, the sales or use tax imposed by sections under this Code shall be a first and prior lien upon the goods and business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement and shall take precedence on all such property over other liens or claims of whatever kind or nature.
- (b) *Effect of sale of business; purchases subject to lien.*
 - (1) *Sale of business.* Any person who shall sell out a business or stock of goods or who shall quit business shall be required to make out the return as provided in this Code within ten days after the date the person sold the business or stock of goods or quit business, and such person's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of taxes due and unpaid until such time as the former owner shall produce a receipt from the city treasurer showing that the taxes have been paid or a certificate that no taxes are due.
 - (2) *Purchases subject to lien.* If the purchaser of a business or stock or goods shall fail to withhold the purchase money as provided in subsection (b)(1) of this section and the taxes are unpaid after the ten-day period allowed, the purchaser, as well as the seller, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any person under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale or otherwise, takes such subject to the lien for any delinquent sales taxes owed by such person and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of the property so taken or acquired.
- (c) *Status of unpaid tax in bankruptcy and receivership.* Whenever the business or property of any taxpayer subject to this Code shall be placed in receivership, bankruptcy or assignment for the benefit of creditors or seized under distraint for any taxes, all taxes, penalties and interest imposed by this Code and for which such retailer is in any way liable under the terms of this Code shall be a prior and preferred lien against all the property of such taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided herein on the property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer. No

sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Code under process or order of any court without first ascertaining from the city treasurer the amount of any taxes due and payable under this Code, and if there are any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of such taxes out of the proceeds of such sale before making payment of any monies to judgment creditor or other claims of whatever nature, except that the costs of the proceedings and other preexisting claims or liens as above provided.

(d) *Construction improvements.*

(1) *Lien for unpaid taxes on personal property affixed to real property.* The full amount of unpaid taxes arising from and required to be reported on personal property affixed to real property under this Code, together with interest and penalties as provided in this Code, shall be and constitute a first and prior lien, which lien shall have precedence over all other liens of whatever kind and nature, except as to liens for general taxes created by State law and except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice of tax lien on the property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer.

(2) *Final inspection or certificate of occupancy denied unless tax paid.* No final inspection shall be made by the city building inspector or no certificate of occupancy shall be issued unless all taxes due, as provided in this Code, on all lumber, fixtures and any other building materials and supplies used in or connected with the construction, reconstruction, alteration, expansion, modification or improvement of any building, dwelling or other structure or improvement to real property within the city have been paid or arrangements therefor made with the city treasurer.

(e) *Notice of tax lien.* If any taxes, penalty or interest imposed by this Code and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this Code are not paid when due, the city may issue a notice of intent to file a tax lien to the taxpayer, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof and that the city claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided in this subsection on property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer.

(f) *Issuance of distraint warrant; filing of lien.* Notice of lien shall be on forms prescribed by the city treasurer whose duties are the collection of such tax and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. The city treasurer may issue a distraint warrant as provided in subsection (h) of this section at any time when taxes that are due remain unpaid, regardless of whether a notice of tax lien has been issued.

(g) *Jeopardy assessment and distraint.*

(1) *Jeopardy enforcement.* If the city treasurer finds that collection of the tax will be jeopardized by delay, in the city treasurer's discretion, the city treasurer may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof, and having done so, the tax shall be due and payable forthwith, and the city treasurer may proceed immediately to collect such tax as provided in subsection (h) of this section.

(2) *Immediate enforcement action.* In any other case wherein it appears that the revenue is in jeopardy, the city treasurer may immediately issue demand for payment; and, regardless of the provisions of Sections 26-397 and 26-398, the tax shall be due and

payable forthwith and, in the city treasurer's discretion, the city treasurer may proceed immediately to collect the tax as provided in subsection (h) of this section.

- (3) *Security for payment.* Collection under either subsection (g)(1) or (g)(2) of this section may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the city treasurer.

(h) *Methods of enforcing collection.*

- (1) *Issuance of distraint.* The city treasurer may issue a warrant under the city treasurer's own hand directed to any employee, agent or representative of the city treasurer, sometimes referred to collectively in this section as "agent" or "revenue collector," or to any sheriff of any county of the state, commanding such person to distraint, seize cash and cash equivalents, and/or seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any statute of this state, for the payment of the tax due together with penalties and interest accrued thereon and cost of execution:

- a. When any deficiency in tax is not paid within 30 calendar days after the date of the notice of final determination, assessment and demand for payment and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this state within such period;
- b. When any other amount of tax, penalty or interest is not paid within 30 calendar days after the date of the notice of final determination, assessment and demand for payment thereof; or
- c. Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment as provided in subsection (g) of this section.

- (2) *Distraint seizure; advertisement of sale.* The agent charged with the seizure shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be left with the owner or possessor or at the owner's or possessor's usual place of abode with some member of the owner's or possessor's family over the age of 18 years. The account may also be left at the owner's or possessor's usual place of business with the owner's or possessor's stenographer, bookkeeper or chief clerk or, if the taxpayer is a corporation, shall be left with any officer, manager, general agent or agent for process, with a note of the sum demanded and the time and place of sale; and shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold in a legal newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the city treasurer, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two other public places within such county. The time fixed for the sale shall not be less than ten days nor more than 60 days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned from time to time by such agent or sheriff if it is deemed advisable, but not for a time to exceed a total of 90 days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare such to be purchased by such agent or sheriff for the city. The property so purchased may be sold by the agent or the sheriff under such regulations as may be prescribed by the city treasurer. In any case of distraint for the payment of taxes, the goods, chattels or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid, together with the fees and other charges or may

be redeemed by any person holding evidence satisfactory to the city treasurer of right of possession.

- (3) *Receipt of sale; evidence of purchase.* In all cases of sale, the agent or sheriff making the sale shall issue a receipt of sale to each purchaser, and such receipt shall be prima facie evidence of the right of the agent or sheriff to make such sale and shall transfer to the purchaser all right, title and interest in and to the property sold; and where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of the transfer, and the certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and where the subject of sale is securities or other evidences of debt in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding such as against any other person. Any surplus remaining above the taxes, penalties, interest, costs and expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto, and, on demand, the city treasurer shall render an account in writing of the sale.
 - (4) *Filing and release of lien.* Any employee, agent or representative of the city treasurer to whom a distraint warrant has been directed may file with the person in possession of any personal property or right to property belonging to the taxpayer a notice of tax lien on such forms as the city treasurer may prescribe. The filing of such notice of lien shall operate from the date of such filing. The city treasurer may release the lien as to any part or all of the property or rights to property covered by any such lien upon such terms as the city treasurer may deem proper.
 - (5) *Lien released.* Any lien for taxes as shown on the records of the county clerk and recorder as provided in this section, upon payment of all taxes, penalties and interest covered thereby, shall be released by the city treasurer in the same manner as mortgages and judgments are released.
- (i) *Recovery of unpaid tax by action at law.*
- (1) *Action at law.* The city treasurer may also treat any such taxes, penalties or interest due and unpaid as a debt due the city from the taxpayer. In case of failure to pay the tax or any portion thereof or any penalty or interest thereon when due, the city treasurer may receive at law the amount of such taxes, penalties and interest in such county or district court of the county wherein the taxpayer resides or has a principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the city treasurer as provided in this Code shall be prima facie proof of the amount due.
 - (2) *Writs of attachment.* Such actions may be actions in attachment and writs of attachment may be issued to the sheriff, and in any such proceedings no bond shall be required of the city treasurer nor shall any sheriff require of the city treasurer an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings, and the city treasurer may prosecute appeals or writs of error in such cases without the necessity of providing a bond. It shall be the duty of the city attorney, when requested by the city treasurer, to commence action for the recovery of taxes due under this Code, and this remedy shall be in addition to all other existing remedies or remedies provided in this Code.
 - (3) *Civil action to enforce lien.* In any case where there has been a refusal or neglect to pay any tax due the city and a statement or notice shall have been filed which, under law, creates a lien upon any real property for such tax, the city treasurer may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to such lien to enforce the lien of the city for such tax upon the real property situated in that county or in any other county in the state which may be subject to such lien or to subject any real property or any right, title or interest in real property to

the payment of such tax. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and the city the proceedings in such action, and the manner of sale, the period for and manner of redemption from such 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.

- (j) *City as party defendant.* In any action affecting the title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining in adjudication or determination of its lien upon the property involved therein, and in any such action service of summons upon the city treasurer or any other person permitted by law shall be sufficient service and binding upon the city.
- (k) *Certificate of discharge.*
 - (1) *Subject to lien.* If any property, real or personal, under the law shall be subject to a lien for the non-payment of any tax due and if the city treasurer finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property, the city treasurer may issue a certificate of discharge for any part of the property subject to the lien.
 - (2) *Part of property.* If any property, real or personal, under the law shall be subject to a lien for the non-payment of any tax due the city, the city treasurer may issue a certificate of discharge for any part of the property subject to the lien if there is paid over to the city treasurer an amount determined by the city treasurer which shall not be less than the value, as determined by the city treasurer, of the interest the city has in the part to be so discharged.
 - (3) *Determination of values.* In determining such values, the city treasurer shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the city.
 - (4) *Certificate of release conclusive.* A certificate of release or of partial discharge issued under subsection (l)(1) of this section shall be held conclusive in order that the lien of the city upon the property release therein is extinguished, but shall not extinguish nor release any portion of the lien nor property not specified in the release.
- (l) *Summons to court for violation of Code.* The city treasurer may, at the discretion of the city treasurer, summon to municipal court any person who may be in violation of this Code as set forth in Section 26-394 or elsewhere in this Code.
- (m) *Closing agreements.*
 - (1) *Satisfaction of liability.* For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships or corporations in the process of dissolution or which have been dissolved, the city treasurer may agree with the fiduciary or director upon the amount of taxes due from the decedent, the decedent's estate, the trust, receivership or other fiduciary relationship or corporation for any of the fiduciary's or director's or its taxable periods under the provisions of the taxes covered by this Code and, except upon a showing of fraud, malfeasance or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.
 - (2) *Personal liability.* Except as provided in subsection (m)(4) of this section, any personal representative of a decedent or of the estate of a decedent or any trustee, receiver or other person acting in a fiduciary capacity or any director of a corporation in the process of dissolution or which has been dissolved who distributes the estate or fund in such

person's control without having first paid any taxes covered by this Code due from such decedent's estate, trust estate, receivership or corporation covered by this Code and which may be assessed within the time limited by this Code shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation covered by this Code and which may be assessed within the time limited by this Code.

- (3) In addition to the personal liability provided in subsection (m)(2) of this section, all officers of a corporation and all members of a partnership or a limited liability company required to collect, account for, and pay over any tax administered by this article who willfully fail to collect, account for, or pay over such tax or who willfully attempt in any manner to evade or defeat any such tax, or the payment thereof, and have been found to have violated Section 26-394, are subject to penalties as prescribed in Section 26-393(d) herein. An officer of a corporation or a member of a partnership or a limited liability company shall be deemed to be subject to this section if the corporation, partnership, or limited liability company is subject to filing returns or paying taxes administered by this article and if such officers of corporations or members of partnerships or limited liability companies voluntarily or at the direction of their superiors assume the duties or responsibilities of complying with the provisions of any tax administered by this article on behalf of the corporation, partnership, or limited liability company.
- (4) *Notification of liability.* The distributee of a decedent's estate or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation shall be liable to the extent of the decedent, trust estate, fund or corporation covered by this Code and which may be assessed within the time limited by this Code. Notice to such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.
- (5) *Limitation of liability.*
 - a. In case the tax imposed by this Code is due from a decedent or the decedent's estate or by a corporation, in order for personal liability under subsection (m)(2) of this section to remain in effect, determination of the tax due shall be made and a notice and demand shall issue within 18 months after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable by any personal representative of such decedent or by the corporation, filed after the filing of its return, but a request under this provision shall not extend the period of limitation otherwise applicable.
 - b. This subsection (m)(4) will not apply in the case of a corporation unless:
 1. Such request notified the city treasurer that the corporation contemplates dissolution at or before the expiration of such 18-month period.
 2. The dissolution is begun in good faith before the expiration of such 18-month period.
 3. The dissolution is completed.
 - c. Upon the expiration of the 18-month period, without determination being made and notice and demand being issued, the personal representative or representatives of the decedent and the directors of the corporation no longer will be liable under the provisions of subsection (m)(2) of this section.

(Code 1975, § 9-21; Ord. No. 2134, 12-16-91; Ord. No. 2362, §§ 54--56, 1-9-95; Ord. No. 2663, § 7, 4-23-01; Ord. No. 2956, § 12, 8-22-06; Ord. No. 3135, § 4, 7-13-10; Ord. No. 3265, § 8, 9-24-13)

Sec. 26-400. Limitations.

(a) *General limitations.*

- (1) *Statutory limitations.* Except as provided in this section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Code shall not be assessed nor credit taken nor shall any notice of lien be filed or distraint warrant issued or suit for collection be instituted or any other action to collect such be commenced more than three years (36 months) after the date on which the tax was or is payable. In the case of actions demonstrating an intent to evade the tax, which actions include but are not limited to filing false or fraudulent returns, not filing returns, or not obtaining a license as required by this Code, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be commenced at any time.
- (2) *Date fixed.* For purposes of this section a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.
- (3) *Extension of period.* If the city provides written notice to the taxpayer prior to the expiration of the period of limitation that the taxpayer's records will be audited pursuant to this Code thus constituting commencement of an audit, such period of limitation shall be extended until 30 days after the date of the notice of final determination issued as a result of such audit.
- (4) *Revision qualification; periods covered.* Nothing in this section shall be construed to limit any right accrued or to revive any liability barred by any statute at the effective date of the ordinance from which this article derives.

- (b) *Trust status of tax in possession of retailer.* All sums of money paid by the purchaser to the retailer as taxes imposed by this Code shall be and remain public money, the property of the city in the hands of such retailer, and the retailer shall hold the money in trust for the sole use and benefit of the city until paid to the city, and for failure to so pay to the city such retailer shall be punished as provided by law.

(Code 1975, § 9-23; Ord. No. 2134, 12-16-91; Ord. No. 2362, § 58, 1-9-95; Ord. No. 2866, § 3, 11-23-04; Ord. No. 2956, § 13, 8-22-06)

Sec. 26-401. Coordinated audit.

- (a) Any taxpayer licensed in this city pursuant to Section 26-391 and holding a similar sales tax license in at least four other state municipalities that administer their own sales tax collection may request a coordinated audit as provided in this section.
- (b) Within 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 city finance director, 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 state municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon this city's right to recover tax owed by the vendor for the audit period.
- (c) Except as provided in subsection (g) of this section, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of limitation under Section 26-400 may be audited by this city during the 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 who submits a complete request for a coordinated audit pursuant to subsection (c) of this section, the finance director shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten 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 the 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 the 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 the ordinance from which this section derives; or
 - (3) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subsection (b) of this section.

(Code 1975, § 9-24; Ord. No. 2134, 12-16-91; Ord. No. 2362, § 59, 1-9-95; Ord. No. 2956, § 14, 8-22-06)

Sec. 26-402. Claims for recovery.

- (a) 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.
- (b) As used in this section, the term "claim for recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (c) When it is determined by the finance director 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 the 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.
- (d) 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 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.

- (e) Within 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 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.
- (f) 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.
- (g) The period subject to a claim for recovery shall be limited to the 36-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

(Code 1975, § 9-25; Ord. No. 2134, 12-16-91)

Sec. 26-403. Notice of amendment.

- (a) In order to initiate a central register of tax ordinances for municipalities that administer local sales tax collection, the finance director shall file with the Colorado Municipal League, prior to the effective date of the ordinance from which this section derives, a copy of the city sales and use tax ordinance reflecting all provisions in effect on the effective date of the ordinance from which this section derives.
- (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 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 this section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

(Code 1975, § 9-26; Ord. No. 2134, 12-16-91)

Sec. 26-404. Participation in simplification meetings.

The finance director shall cooperate with and participate on an as needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax and business officials. The committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

(Code 1975, § 9-27; Ord. No. 2134, 12-16-91)

Secs. 26-405--26-430. Reserved.

ARTICLE VI. TELEPHONE TAX

Sec. 26-431. Amount of levy.

There is levied on and against each telephone utility company operating within the city a tax on the occupation and business of maintaining a telephone exchange and use of lines connected therewith in the city and of supplying local exchange telephone service to the inhabitants of the city. The annual amount of tax levied shall be equal to \$8.00 per telephone account for which local exchange telephone service is provided within the corporate limits of the city on January 1 of each year.

(Code 1975, § 9-77; Ord. No. 871, 4-23-79; Ord. No. 1412, 12-3-84; Ord. No. 2956, § 15, 8-22-06)

Sec. 26-432. Due date.

The tax levied by this article shall be due and payable in four quarterly installments, with each installment due 30 days after each quarterly period.

(Code 1975, § 9-78; Ord. No. 871, 4-23-79; Ord. No. 1412, 12-3-84; Ord. No. 2956, § 16, 8-22-06)

Sec. 26-433. Statement of accounts.

Within 30 days after the quarterly dates of April 1, July 1, October 1 and January 1 as provided in Section 26-432, each telephone utility company subject to this article shall file with the city treasurer, in such form as the treasurer 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 the effective quarterly date. Such statement shall be accompanied with payment as provided in Section 26-431.

(Code 1975, § 9-79; Ord. No. 871, 4-23-79; Ord. No. 2956, § 17, 8-22-06)

Sec. 26-434. Failure to pay; collection of debt.

If any telephone utility company subject to the provisions of this article shall fail to pay the taxes as provided in this article, the full amount thereof shall be due and collected from such company, and the amount, together with an addition of ten percent of the amount of taxes due and interest in accordance with Section 26-393 of this Code, 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 in the name of the people of the state.

(Code 1975, § 9-80; Ord. No. 871, 4-23-79; Ord. No. 2956, § 18, 8-22-06)

Sec. 26-435. Violations and penalties.

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this article shall fail, neglect or refuse to make or file the quarterly statement of accounts provided in Section 26-433, such officer, agent, manager or person shall, on conviction thereof, be punished by a fine of not less than \$25.00 nor more than \$1,000.00, provided that each day after the statement shall become delinquent during which such officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense.

(Code 1975, § 9-81; Ord. No. 871, 4-23-79)

Sec. 26-436. Inspection of records.

The city, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility company which is subject to the provisions of this article and to make copies of the entries or contents thereof.

(Code 1975, § 9-82; Ord. No. 871, 4-23-79)

Sec. 26-437. Construction of article.

The tax provided in this article is upon occupations and businesses in 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 article be construed to mean that any telephone company is issued a franchise by the city.

(Code 1975, § 9-83; Ord. No. 871, 4-23-79)

Secs. 26-438--26-465. Reserved.

ARTICLE VII. LODGINGS TAX

Sec. 26-466. Levied.

There is levied an excise tax on the price paid or charged for the lease, rental or furnishing of rooms or other public accommodations to any person who, for a consideration, uses, possesses or has the right to use or possess any room or other public accommodations in any hotel, apartment hotel, guesthouse, guest ranch, mobile home, autocamp, trailer court or park or any other place furnishing rooms or other public accommodations under any concession, permit, right of access, license to use or other agreement. Such tax on public accommodations shall be subject to the following conditions:

- (1) The tax levied shall be in lieu of city sales tax on such rental or furnishing of public accommodations.
- (2) The tax levied shall be collected and paid at the rate of 7 percent of the purchase price.
- (3) The purchase price paid or charged for such accommodations shall exclude the sale of any goods, services and commodities other than the furnishing of rooms or other accommodations.
- (4) The person making such rooms or other public accommodations available shall, for all purposes of this article, be deemed to be a retailer or vendor as defined in Section 26-388.

(Code 1975, § 9-85; Ord. No. 1116, 4-12-82; Ord. No. 1618, 11-24-86)

Sec. 26-467. Exemptions.

Exempt from the imposition of the public accommodations taxes or any combination thereof, as the context sets forth, are the following:

The sales and purchase of room accommodations to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, mobile home, auto camp, trailer court or park or any other place. Such resident must, prior to occupancy, enter into a written agreement for occupancy of a room or accommodations for a period of at least 30 consecutive days during the calendar year or preceding year. This exemption shall not apply to the sale of any goods, services or commodities other than the furnishing of rooms and accommodations, unless such goods, services or commodities are otherwise exempt from the tax as provided in this article.

(Code 1975, § 9-86; Ord. No. 1116, 4-12-82; Ord. No. 2956, § 19, 8-22-06)

Sec. 26-468. Violations and penalties.

- (a) *Estimated taxes and penalties.* Estimated taxes, interest and penalties for lodging services furnished in the city will be assessed and collected in accordance with Section 26-393 of this Code.
- (b) If any person or company subject to the provisions of this article shall fail to pay the taxes as provided in this article, the full amount thereof shall be due and collected from such person or company, and the amount, together with an addition of 10 percent of the amount of taxes due and interest in accordance with Section 26-393 of this Code, shall be and is declared to be a debt due and owing from such person or company to the city.

(c) Any violation of the provisions of this article shall be punishable as provided in Section 1-8(a).

(Code 1975, § 9-87; Ord. No. 1116, 4-12-82; Ord. No. 2956, § 20, 8-22-06)

Sec. 26-469. Exemption from imprisonment.

Any person who has not become 18 years of age as of the date of any violation of this article shall not be subject to imprisonment unless such is imposed for failure to comply with a lawful order of court or for contempt of court as provided by state statute.

(Code 1975, § 9-88; Ord. No. 1181, 10-25-82)