

CHAPTER 4

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ARTICLE 1

Fiscal Year

Sec. 4-1-10. Fiscal year established.

The fiscal year of the City shall commence on January 1 of each year and shall extend through December 31 of the same year. (Ord. 774-06 §1)

ARTICLE 2

Funds Generally

Sec. 4-2-10. Custody and management of funds.

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Finance Officer. The Finance Officer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the City shall be invested or deposited by the Finance Officer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the City Council may transfer out of any fund any amount at any time to be used for such purpose as the City Council may direct. (Ord. 774-06 §1)

ARTICLE 3

General and Special Funds

Sec. 4-3-10. General Fund created.

There is hereby created a fund, to be known as the General Fund, which shall consist of the following:

- (1) All cash balances of the City not specifically belonging to any existing special fund of the City.
- (2) All fixed assets of the City (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the City. (Ord. 774-06 §1)

Sec. 4-3-20. Capital Improvement Fund created.

There is hereby created a special fund, to be known as the Capital Improvement Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 774-06 §1)

Sec. 4-3-30. Conservation Trust Fund created.

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 774-06 §1)

ARTICLE 4

Sales and Use Tax

Division I. General Provisions

Sec. 4-4-10. Definitions.

(a) There are hereby incorporated and made a part hereof those definitions contained in Section 39-26-102, C.R.S., which shall be applicable to this Article.

(b) The following definitions shall apply to the remainder of this Article:

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

Contractor means any individual, partnership, firm, association, corporation, trust, estate or joint venture who performs work on real property for another party under the terms of an agreement. Any individual working for a salary or wages shall not be considered a contractor. The term includes, but is not limited to, building contractors, road contractors, grading and excavating contractors, electrical contractors, and plumbing and heating contractors; and also includes any other person engaged, under a contractual or quasi-contractual arrangement, in the construction, reconstruction or repair of any building, bridge or other structure. For the purposes of this definition, the term *subcontractor* has the same meaning as *contractor*. All contractors or subcontractors, as defined by this Paragraph, are considered as retail purchasers and ultimate consumers and must pay sales tax to vendors upon items upon which a sales tax is imposed, and must pay a use tax upon all items upon which a use tax is imposed. Furthermore, purchasing, storage, consumption, use, etc., of items to be incorporated in or become a part of the improvement upon which the contractor or subcontractor is working shall not be considered property of a product or service which is manufactured, compounded or otherwise processed; and the contractor or subcontractor shall not be considered a person engaged in the business of manufacturing or compounding for sale, profit or use any such article, substance or commodity.

Purchase price means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Chapter, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the 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 the State, including but not limited to vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft.

Retail sales means all sales except wholesale sales.

Retailer or vendor means a person doing a retail business known to the trade and public as such, and selling to the user or consumer, and not for resale.

Sale or sale and purchase includes installment and credit sales and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale.

Storage or storing means any keeping or retention of or exercise of dominion or control over, tangible personal property in the City.

Taxpayer means any person obligated to account to the Executive Director of the Colorado Department of Revenue or the City Clerk for taxes collected or to be collected under the terms of this ordinance.

Wholesale sale means a sale by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers to users or consumers not for resale; and the latter sales shall be deemed retail sales and subject to the provisions of this Chapter. (Prior code §19A-1; Ord. 774-06 §1)

Sec. 4-4-20. Credit for sales or use taxes previously paid to another municipality.

For transactions consummated on or after January 1, 1986, the City sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the City's sales tax rate in effect at the time of the transaction. A credit shall be granted against the City's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the amount of the tax imposed by this Article. (Prior code §19A-12.1)

Sec. 4-4-30. Effective date.

The taxes imposed and licenses required by this Article shall take effect and be imposed and required as of July 1, 1980. (Prior code §19A-20)

Sec. 4-4-40. Violation; penalty.

Any person convicted of violating any of the provisions of this Article, including but not limited to failing to pay any tax imposed in this Article when due, failure to file returns or reports or filing a false or fraudulent return, which are required by the provisions of this Article, in addition to all other remedies of a civil nature provided for in this Article, shall be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code §19A-21; Ord. 774-06 §1)

Division 2. Sales Tax

Sec. 4-4-110. Sales tax imposed.

There is hereby imposed, upon the sale of tangible personal property at retail and upon the furnishing of services, a tax of three and six-tenths percent (3.6%) of gross receipts derived from sales and services which are subject to said tax, to be computed in accordance with schedules or systems approved by the Executive Director of the Colorado Department of Revenue as the same may be from time to time amended. (Prior code §19A-2; Ord. 773-06 §1)

Sec. 4-4-120. Retail sale designated.

For the purposes of this Article, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his or her agent, to a destination outside the limits of the City, or to a common carrier for delivery to a destination outside the limits of the City. (Prior code §19A-3)

Sec. 4-4-130. Gross receipts.

Gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. (Prior code §19A-4; Ord. 774-06 §1)

Sec. 4-4-140. No permanent place or multiple places of business.

If a retailer has no permanent place of business in the City, or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of a sales tax imposed by this Article shall be determined by the provisions of Article 26, Title 39, C.R.S., and by rules and regulations promulgated by the Colorado Department of Revenue. (Prior code §19A-5; Ord. 774-06 §1)

Sec. 4-4-150. Certain building material exempted.

(a) For transactions consummated on or before December 31, 1985, notwithstanding any other provisions of this Article, the value of construction and building materials on which a use tax

has previously been collected by an incorporated town, city or county shall be exempt from the sales tax imposed by this Article, if the materials were delivered by the retailer or his or her agent to a site within the limits of the City.

(b) For transactions consummated on or after January 1, 1986, the sales tax imposed by this Article shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit, certificate of use or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid. (Prior code §19A-6)

Sec. 4-4-160. Tax not to duplicate other taxes.

The amount subject to the sales tax imposed by this Article shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S. (Prior code §19A-7; Ord. 774-06 §1)

Sec. 4-4-170. Exemptions; exceptions to state sales tax.

The tangible personal property and services taxable pursuant to this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and subject to the same exemptions as those specified in Section 39-26-114, C.R.S.; provided, however, that sales of food exempted from the state sales tax pursuant to Section 39-226-114(1)(a)(XX), C.R.S., and sales and purchases of electricity, coal, gas, fuel oil or coke exempted from the state sales tax pursuant to Section 39-26-114(1)(a)(XXI) or 39-26-114(11), C.R.S., are not exempted from the tax imposed by this Article. (Prior code §19A-8; Ord. 774-06 §1)

Sec. 4-4-180. Dispute by purchaser; refund.

Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Article, nevertheless the seller shall collect and the purchaser shall pay the tax, and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the Executive Director of the Colorado Department of Revenue, showing the names of the seller and the purchaser, the items purchased, the date, price and amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Executive Director for a refund of such taxes, and it is then the duty of the Executive Director to determine the question of exemption. All refunds shall be made or credits allowed in accordance with the provisions of Part 1, Article 26, Title 39, C.R.S., and all proceedings before the Executive Director shall be governed by said statute and by rules and regulations promulgated by the Colorado Department of Revenue pursuant thereto. (Prior code §19A-9; Ord. 774-06 §1)

Sec. 4-4-190. Collection a lien on business.

(a) The collection, administration and enforcement of the sales tax imposed by this Article shall be performed as required by Article 26 of Title 39, C.R.S., by the Executive Director of the Colorado Department of Revenue in the same manner as the collection, administration and enforcement of the state sales tax, as required by Article 26, Title 39, C.R.S.

(b) The tax imposed by this Article 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, except stock of goods sold or for sale in the ordinary course of business and shall take precedence on all such property over other liens or claims of whatsoever kind or nature, except that of the State, pursuant to Section 39-26-117, C.R.S. (Prior code §19A-10; Ord. 774-06 §1)

Sec. 4-4-200. Failure to pay taxes; false statements.

It is unlawful for any retailer or vendor to make any false or fraudulent statements upon any return required by the Executive Director of the Colorado Department of Revenue, required for the collection of the tax imposed by this Article; to fail or refuse to make payment of said taxes; or in any manner to evade the collection of said taxes or any part thereof. (Prior code §19A-11)

Sec. 4-4-210. Vendor's fee.

Any vendor who, under the provisions of Article 26 of Title 39, C.R.S., is required to collect sales tax and make returns thereof, or who is required to do so by this Chapter, shall be allowed to deduct from the sum remitted to the City an amount equivalent to three and one-third percent (3 $\frac{1}{3}$ %) of the sum so remitted for purpose of covering his or her expenses in collection and remittance of the tax; however, if such vendor is delinquent in remitting said tax, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting or remitting said tax, and an amount equivalent to the full three percent (3%) shall be remitted by any such delinquent vendor. (Prior code §19A-12)

Division 3. Use Tax

Sec. 4-4-310. Use tax imposed; nonapplicability.

(a) There is hereby imposed and shall be collected, from every person to whom this tax is applicable, a tax upon the privilege of storing, using or consuming any construction and building material except as prohibited by Subsection (b) below for transactions consummated on or after January 1, 1986), and motor and other vehicles on which registration is required purchased at retail. This tax shall be equal to three and six-tenths percent (3.6%) of the purchase price of the property and shall be payable to and collected by the City Clerk in accordance with schedules or systems approved by the Executive Director of the Colorado Department of Revenue as the same may be from time to time amended.

(b) With reference to the imposition and collection of use tax, *construction and building material* means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral part of the completed structure or project, including public and private improvements. (Prior code §19A-13; Ord. 773-06 §2)

Sec. 4-4-320. Exemptions.

The tax imposed by this Article shall not apply to the following:

(1) To the storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the City;

(2) To the storage, use or consumption of any tangible personal property purchased for resale in the City, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(3) To the storage, use or consumption of tangible personal property brought into the City by a nonresident of the City, for his or her own storage, use or consumption while temporarily within the City; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into the State by a nonresident to be used in the conduct of a business in the State;

(4) To the storage, use or consumption of tangible personal property by, for or on behalf of the United States government, or the State, its institutions or political subdivisions in their governmental capacities only, or by charitable organizations in their charitable capacities only; when stored for or on behalf of any such entity, such fact shall be attested to by said entity on forms provided by the City;

(5) To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished, or the container, label or furnished shipping case thereof;

(6) For transactions consummated on or before December 31, 1985, to the storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax within a town, city or county, equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the City of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid by such person by reason of the imposition of the sales or use tax of another town, city or county, on the purchase or use of the property. The amount of the credit shall not exceed tax imposed by this Article;

(7) For transactions consummated on or after January 1, 1986, the City's use tax shall not apply to the storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule municipality equal to or in excess of that imposed by this Article. A credit shall be granted against the City's use tax with respect to a person's storage, use or consumption in the City of tangible personal property purchased by him or her in a previous statutory or home rule municipality. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his or her purchase or use of the property. The amount of this credit shall not exceed the tax imposed by this Article;

(8) To the storage, use or consumption of tangible personal property and household effects acquired outside of the City, and brought into it by a nonresident acquiring residency;

(9) To the storage or use of a motor vehicle, if the owner is or was at the time of purchase a nonresident of the City and he or she purchased the vehicle outside the City for use outside of the City and actually so used it for a substantial and primary purpose from which it was acquired, and he or she registered, titled and licensed said motor vehicle outside of the City;

(10) To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required, if the written contract for the purchase thereof was entered into prior to the effective date of this use tax; and

(11) To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of this use tax. (Prior code §19A-14)

Sec. 4-4-330. Motor vehicle taxes.

Taxes imposed upon motor and other vehicles on which registration is required shall be collected, administered and enforced in accordance with Section 39-26-208, C.R.S. (Prior code §19A-15; Ord. 774-06 §1)

Sec. 4-4-340. Collection.

The tax imposed in this Article on the privilege of storing, using or consuming in the City any construction and building materials purchased at retail shall be collected as follows:

(1) The use tax shall be collected at the time permits are issued for building and construction by the Building Department. The payment of the use tax shall be the responsibility of the person applying for and receiving the building permit. For the purposes of this Section, the value of the construction and building materials to be stored, used or consumed as a part of any project shall be deemed to be an amount equal to fifty percent (50%) of the total valuation or gross cost of the building or construction project as is stated in the building permit issued. If the tax is paid in this way, no further sales or use tax information will be required for final inspection of the project by the Building Department.

(2) As an alternative to the estimation procedure for payment of the use tax described in Paragraph (1) above, the taxpayer, at the time of securing the building or construction permit, may register to file use tax returns and reports and to report and pay the tax monthly on the first day of the month next succeeding storage, consumption or use within the City; or if the project is to be completed within six (6) months from commencement, then six (6) months from commencement, but in no event more than eight (8) months subsequent to storage, use or consumption within the limits of the City. Furthermore, if the taxpayer chooses to report and pay the tax in this way, a final return must be filed and approved and all use tax paid before final building inspection is made or a certificate of occupancy issued.

(3) A building permit shall be applied for within thirty (30) days of storage, use or consumption within the limits of the City; or, in lieu thereof, the owner or person in whose custody the goods are maintained shall file a use tax return and pay the tax imposed within said

time period. The owner or person in whose custody the goods are maintained shall be severally liable therefor. (Prior code §19A-16; Ord. 774-06 §1)

Sec. 4-4-350. Penalty for late payment.

The City use tax is due and payable at the time of the filing of the return, and if the tax is not paid when due, a penalty equal to ten percent (10%) of the amount due, plus interest at the rate of fifteen percent (15%) per year, will be added to the principal amount of the tax. All such use tax returns and reports shall be subscribed by the taxpayer or his or her agent, and shall contain a written declaration that it is made under penalties of perjury. (Prior code §19A-17)

Sec. 4-4-360. Reports by City.

The City shall devise, publish and make available use tax returns and reports in and upon such forms as may be necessary and appropriate for the complete reporting and collection of the City use tax under the provisions of this Article. The City shall make and enforce such additional rules and regulations as may be necessary for the proper administration and enforcement of this Article. Further, the City shall institute such legal action, suits or proceedings in any Court of competent jurisdiction against any persons from whom a use tax is due and payable, to establish the amount due, and for collection of delinquent tax and any applicable penalties and interest. (Prior code §19A-18; Ord. 774-06 §1)

Sec. 4-4-370. Lien upon property.

(a) The tax imposed by this Article, together with any penalties and interest thereon, shall be a first and prior lien upon all of the property, real and personal, of the person from whom the tax is due, subject only to any liens of the State or the United States which, under applicable law, would have priority. Said lien shall become effective upon filing a notice of the same with the County Clerk and Recorder of any county in which the delinquent taxpayer owns any property, shall constitute a lien upon the property found in said county, and shall constitute notice to all persons of said lien. Furthermore, the unpaid tax shall be a personal liability of the person owing the tax, and the City may pursue its remedies by foreclosing its lien, by proceeding personally against the delinquent taxpayer or both, in which latter event, the City shall be entitled to any deficiency after sale of the property of the taxpayer, it being intended that remedies provided herein are cumulative.

(b) A copy of the notice of lien shall be mailed to the delinquent taxpayer by certified mail, return receipt requested, at his or her last known address, or delivered personally to him or her or to any member of his or her household at his or her usual place of residence. In the event the delinquent taxpayer is a corporation or partnership, said notice may be mailed to any officer or registered agent of said corporation or to any partner of the partnership, by certified mail, return receipt requested, at his or her last known address. (Prior code §19A-19; Ord. 774-06 §1)

Sec. 4-4-380. Alternative dispute resolution procedure; deficiency notice or claim for refund.

For transactions consummated on or after January 1, 1986, the taxpayer may elect a hearing on the final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section.

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

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

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

a. The taxpayer has timely requested in writing a hearing before the City specifying appeal under this Section, and the City has held such hearing and issued a final decision thereon. A request is timely if filed within ten (10) days of the date of mailing the deficiency notice. Such hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City shall hold such hearing and issue the final decision thereon within ninety (90) days after the City's receipt of the taxpayer's written request therefor, except that the City may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer; however, in any such event, the City shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor; or

b. The taxpayer has timely requested in writing a hearing before the City and the City has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in Paragraph (1) above.

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

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

(6) Nothing in this Section shall prohibit the taxpayer from pursuing a judicial review of a final decision of the City as otherwise provided in Section 4-4-370 above. (Prior code §19A-19.1)

