

Title 3

REVENUE AND FINANCE

Chapters:

- 3.04 Sales and Use Tax
- 3.08 Telephone Utilities Tax

Chapter 3.04

SALES AND USE TAX

Sections:

- 3.04.010 Short title.
- 3.04.020 Definitions.
- 3.04.030 Sales tax license.
- 3.04.040 Sales tax levied.
- 3.04.050 Collection and remittance of sales tax.
- 3.04.060 Administration, interpretation and enforcement.
- 3.04.070 Rate of interest.
- 3.04.080 Exemption from sales tax.
- 3.04.090 Disputes and refunds.
- 3.04.110 Review of return.
- 3.04.120 Interest on underpayment.
- 3.04.130 Sales or use tax deficiency due to negligence.
- 3.04.140 Investigations and hearings.
- 3.04.150 Record of sales.
- 3.04.160 Tax lien.
- 3.04.170 Recovery of taxes, penalties and interest.
- 3.04.180 Appeals to City Manager.
- 3.04.190 Appeals.
- 3.04.200 Notices.
- 3.04.210 Authorization of use tax.
- 3.04.220 Exemptions.
- 3.04.230 Monthly return, collection.
- 3.04.240 Tax constitutes lien--Exemption from lien.
- 3.04.250 Use tax--Neglect or refusal to make return or to pay.
- 3.04.260 Penalty interest on unpaid use tax.
- 3.04.280 Limitations.
- 3.04.290 Construction materials.
- 3.04.300 Sales and use tax--Map of municipal boundaries.
- 3.04.310 Penalty and remedies.
- 3.04.320 Use of proceeds of tax.
- 3.04.330 Amendments.
- 3.04.350 Coordinated audit.
- 3.04.360 Intercity claims for recovery.
- 3.04.370 Notice of sales and use tax ordinance amendment.

3.04.380 Participation in simplification meetings.

3.04.010 Short title. This Chapter may be known and cited as the City's Sales and Use Tax. (Ord. 1, §1(part), 1986)

3.04.020 Definitions.

A. As used in this Chapter, unless the context otherwise requires:

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

2. "City" means the City of Delta, or any officer, agent or employee thereof.

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

(i) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;

(ii) 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 or tangible personal property shall be considered short term rentals of tangible personal property;

(iii) Performance of taxable services; or

(iv) Barter or exchange for other property or services including coupons.

(b) The terms "purchase" and "sale" do not include:

(i) A division of partnership assets among the partners according to their interests in the partnership;

(ii) 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;

(iii) The transfer of assets of shareholders in the formation or dissolution of professional corporations;

(iv) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

(v) A transfer of a partnership interest;

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

(vii) 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;

(viii) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

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

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

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

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

5. "Wholesale sales" means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to nonlicensed state retailers are not wholesale sales.

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

(a) Auctioneer;

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

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

7. "Retail sales" means all sales except wholesale sales.

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

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

10. "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.

11. "Tangible personal property" means corporeal personal property.

12. (a) "Price" or "purchase price" 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:

(i) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(ii) 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.

(b) "Price" or "purchase price" includes:

(i) The amount of money received or due in cash and credits.

(ii) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.

(iii) 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.

(iv) 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.

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

(vi) Transportation and other charges to effect delivery of tangible personal property to the purchaser.

(vii) Indirect Federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

(viii) 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.

(c) "Price" or "purchase price" shall not include:

(i) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.

(ii) The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.

(iii) 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.

13. "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.

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

15. "Acquisition charges or costs" includes "purchase price."

16. "Access services" means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunication services.

17. "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.

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

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

20. "Construction materials" means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project including public and private

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

21. "Consumer" means (a) any individual person or (b) 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.

22. "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.

23. "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 a person:

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

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

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

(d) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or

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

24. "Exempt commercial packaging materials" means containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all the following conditions: (a) is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product; (b) is transferred

by said person along with and as a part of the finished product to the purchaser; and (c) is not returnable to said person for reuse.

25. "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.

26. "Finance Director" means the Finance Director of the City or such other person designated by the City. "Finance Director" shall also include such person's designee.

27. "Food" means: food for domestic home consumption as defined in 7 U.S.C. section 2012(g) as amended, for purposes of the Federal food stamp program as defined in 7 U.S.C. section 2012(h), as amended, except that "food" does not include carbonated water marketed in containers; salad bars; cold sandwiches; deli trays; and food or drink vended by or through machines or non-coin operated coin-collecting food and snack devices on behalf of a vendor.

28. "License" means a City sales and use tax license.

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

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

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

32. "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 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.

33. "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, books or pocket editions of books.

34. "Pay television" shall include but not be limited to cable, microwave or other television service for which a charge is imposed.

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

36. "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.

37. "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.

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

39. "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.

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

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

42. "Security system services" means electronic security system services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.

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

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



45. "Taxable sales" means gross sales less any exemptions and deductions specified in this Chapter.

46. "Taxable services" means services subject to tax pursuant to this Chapter.

47. "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 combination 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 communications. "Telecommunications service" does not include separately stated non transmission services which constitute computer processing applications used to act on the information to be transmitted.

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

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

50. "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.

51. "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. (Ord. 1, §1(part), 1986; Ord. 12, §1, 1991)

#### 3.04.030 Sales tax license.

A. It shall be unlawful for any retailer to engage in the business of selling at retail, without first having obtained an annual license therefor, which license shall be granted and issued by the City and shall be in force until December 31st of the year issued or until revoked or suspended. Such license shall be granted or renewed only upon application stating the name and mailing address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the City may require. Each application shall be accompanied by \$10.00 application fee.

B. In case business is transacted at two (2) or more separate places by one person, a separate license for each place of business shall be required.

C. Each license shall be numbered and shall show the name, residence, and place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

D. The City Council, after reasonable notice and a hearing, may revoke or suspend the license of any person found by the City Council to have violated any provision of this Chapter.

E. No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Chapter.

F. No license shall be required for any Delta County nonprofit civic organization or church which engages only in occasional sales or fund-raising drives.

G. A Delta County civic organization or church which sponsors a civic event involving multiple vendors may elect to obtain a sales tax license in the name of said sponsor for the event and thereby take responsibility to insure the collection of the City sales tax on taxable sales made by such vendors and remittance to the sponsor, who shall thereafter make a return and remit such sales tax to the City. Such a "civic event" license may be used in lieu of individual sales tax licenses for the individual vendors which would otherwise be required to obtain a license. In the absence of such an event license, each retailer required to have a City sales tax license shall obtain one and remit sales taxes individually in accordance with this Chapter. (Ord. 1 §1(part), 1986; Ord. 3, §1, 1988; Ord. 31 §1, 1997)

#### 3.04.040 Sales tax levied.

A. There is hereby levied and there shall be collected and paid a 3% sales tax as follows:

1. On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.

2.(a) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of exchange, excluding however, from the consideration or purchase price the fair market value of exchanged property if: (i) such exchanged property is to be sold thereafter in the usual course of the retailer's business.

(b) The exchange of three (3) or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this Chapter shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transaction as a retailer, and that he is thereby subject to licensing requirements.

3. Telecommunications services, except interstate or international private communications service, for all international, interstate and intrastate telecommunications service originating from or received on telecommunications equipment in the City, including carrier access services, interstate or international WATS/800 Service,

if the charge for the service is billed to an apparatus, telephone, or account in this City, without regard to where the bill for such services is actually received. If a taxpayer presents to the City written proof of double taxation of the said telecommunications services, the City shall credit against the tax accruing under this Chapter the amount of tax actually paid by the taxpayer to the other taxing entity. If the tax accruing under this Chapter exceeds the amount of tax actually paid by the taxpayer to the other taxing entity, the taxpayer shall pay the difference to the City. The credit provided for in this Section shall not be allowed if the tax actually paid by the taxpayer to the other taxing entity was not by law required to be paid.

Telecommunications services sold for resale to other persons for purposes of providing telecommunications services to the final end user will not be subject to the sales tax.

4. On the purchase price of gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption and not for resale, and upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public or private corporations or enterprises.

5. On the purchase price paid or charged for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drug stores, clubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold to the public. Cover charges shall be included as part of the amount paid for such food or drink.

6. On the purchase price paid or charged to any person for lodging services.

B. Credit Sales: Whenever an article is sold under a conditional sales 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 the article to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. This tax shall be charged and collected by the seller. No refund or credit shall be allowed to either party to the transaction in case of repossession. (Ord. 1, \$1(part), 1986; Ord. 8, \$1, 1991; Ord. 12, \$2, 1991)

#### 3.04.050 Collection and remittance of sales tax.

A. Every retailer shall, irrespective of the provisions of subsection (G), be liable and responsible for the payment of an amount equivalent to three percent (3%) of all sales made by him of commodities or services as specified in Section 3.04.040, and shall before the twentieth day of each month, make a return to the City for the preceding calendar month and remit an amount equivalent to said three percent (3%) of such sales to the City. Such returns of the taxpayer, or his duly authorized agent, shall contain such information and be made in such manner and upon such forms as the City may prescribe, including the State's standard municipal sales and use tax reporting form. The City Manager may extend the time for making

returns and paying the taxes due under such reasonable rules and regulations as he may prescribe. The burden of proving that any person is exempt from collecting the tax on any goods sold and paying the same to the City, or from making such returns, shall be on said person.

B. Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless the seller shall collect and the purchaser shall pay such tax and the seller shall thereupon issue to the purchaser a receipt or certificate on forms prescribed by the City showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the City for a refund of such taxes and it shall then be the duty of the City to determine the question of exemption.

C. It shall be unlawful for any retailer 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 Chapter will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added, that all or any part thereof will be refunded. Provided, however, retailers selling alcoholic beverages by the drink may include the sales tax as part of the sales price to the consumer, using schedules promulgated by the City Manager. Retailers selling by vending machine or vending box shall remit 3% of total sales.

D. Reports to Vendors: If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the City Manager, upon written request of the vendor, may accept reports at such intervals as will, in his opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

E. A retailer doing business in two (2) or more places or locations, taxable, hereunder, may file one return covering all such business activities engaged within the City.

F. If any vendor, during the reporting period, collects as a tax an amount in excess of three percent (3%) of his total taxable sales, he shall remit to the City the full net amount of the tax herein imposed and also such excess. The retention by the retailer or vendor of any excess of tax collections over the three percent (3%) of the total taxable sales of such retailer or vendor, or the intentional failure to remit punctually to the City the full amount required to be remitted by the provisions of this Chapter, is unlawful.

G. The tax shall be computed and collected in accordance with appropriate schedules promulgated by the City Manager. (Ord. 1, §1(part), 1986; Ord. 13, §1, 1986; Ord. 8, §1, 1991)

#### 3.04.060 Administration, interpretation and enforcement.

A. The City Manager shall be responsible for the administration, interpretation and enforcement of this Chapter.

B. The City Manager shall adopt such regulations as may be necessary or desirable for the administration and interpretation of this Chapter.

C. The City may use regulations promulgated by the Colorado Department of Revenue applicable to the State sales and use tax in the administration and interpretation of this Chapter to the extent such regulations are applicable to and consistent with the provisions of this Chapter and regulations issued hereunder. (Ord. 1, §1(part), 1986)

3.04.070 Rate of interest. When interest is required or permitted to be charged under any provisions of this Chapter, the annual rate of interest shall be that established by the state commissioner of banking pursuant to C.R.S. 39-21-110.5, except as otherwise provided. (Ord. 1, §1(part), 1986)

3.04.080 Exemption from sales tax. There shall be exempt from the sales tax under the provisions of this Chapter, the following:

A. All sales to the United States Government, to the State of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

B. All sales made to charitable organizations, in the conduct of their regular charitable functions and activities.

C. All sales which the City is prohibited from taxing under the constitution or laws of the United States or the State of Colorado.

D. All sales of cigarettes.

E. All sales of medical supplies and therapeutic devices.

F. All sales and purchases of commodities and services under the provisions of section 3.04.040(A)(6) to any occupant who is a permanent resident of a hotel, apartment hotel, lodge housing, motor hotel, guesthouse, guest ranch, mobile home, auto camp, trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or rooms or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year.

G. All commodities which are taxed under the provisions of Article 27, Title 39, C.R.S., and all commodities which are taxed under said provisions and the tax is refunded, and all sales and purchases of aviation fuel upon which no Colorado sales tax was in fact collected and retained prior to July 1, 1963. The storage, use, or consumption of such aviation fuel shall be exempt from taxation under the use tax imposed by the Chapter.

H. All sales made to schools, other than schools held or conducted for private or corporate profit.

I. Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this City if such vehicle is purchased from the manufacturer for use exclusively outside this City or in interstate commerce and is delivered by the manufacturer to the purchaser within this City if the purchaser drives or moves such vehicle to any point outside this City within thirty days after the date of delivery, and if the purchaser furnishes an

affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this City and will be removed from the City within thirty days after the date of delivery.

J. Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this City or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this City, if the purchaser drives or moves such vehicle to any point outside this City within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this City and will be removed from this City within thirty days after the date of delivery.

K. All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction and building materials shall, at the time of such actual use, be subject to the tax imposed by Section 3.04.210.

L. Any right to the continuous possession or use for three years or less of any article of tangible personal property under a lease or contract, if the lessor has paid to the City a sales or use tax on such tangible personal property upon its acquisition. The City may permit a lessor of tangible personal property leased for a period of three years or less to acquire such property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on such property.

M. The transfer of tangible personal property without consideration (other than the purchase, sale, or promotion of the transferor's product) to an out-of-city vendee for use outside of this City in selling products normally sold at wholesale by the transferor.

N. The sale of tangible personal property for testing, modification, inspection, or similar type of activities in this City if the ultimate use of such property in manufacturing or similar type of activities occurs outside of this City and if the test, modification, or inspection period does not exceed ninety days.

O. The sale of special fuel, as defined in C.R.S. 39-27-201(8), used for the operation of farm vehicles when such vehicles are being used on farms and ranches.

P. Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by Section 3.04.040.

Q. Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user,

together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by Section 3.04.040.

R. All transactions specified in Section 3.04.040(A)(2)(a), in which the fair market value of the exchanged property is excluded from the consideration or purchase price because such exchanged property is covered by Section 3.04.040(A)(2)(a), and in which, because there is not additional consideration involved in the transaction, there is no purchase price within the meaning of Section 3.04.020(A)(12).

S. All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(1) The United States government, the state of Colorado, its departments and institutions, the political subdivisions thereof in their governmental capacities only;

(2) Charitable organizations in the conduct of their regular charitable functions and activities; or

(3) Schools, other than schools held or conducted for private or corporate profit.

T. All sales and purchases of neat cattle, sheep, lambs, poultry, swine, and goats; all sales and purchases of mares and stallions for breeding purposes; all sales and purchases of live fish for stocking purposes; and all farm close-out sales shall be exempt from taxation under this sales tax, and the storage, use, or consumption of such property shall be exempt from taxation under the use tax imposed by the Chapter.

U. All sales and purchases of feed for livestock, including horses or poultry, all sales and purchases of seeds, and all sales and purchases of orchard trees shall be exempt from taxation under this sales tax, and the storage, use or consumption of such property shall be exempt from taxation under the use tax of this Chapter.

V. All sales and purchases of straw and other bedding for use in the care of livestock or poultry shall be exempt from taxation under the use tax of this Chapter.

W. Forty-eight percent of the purchase price of factory-built housing, as such housing is defined in C.R.S. 24-32-703, shall be exempt from taxation under this sales tax; except that the entire purchase price in any subsequent sale of a mobile home, as such vehicle is defined in C.R.S. 42-1-102(82)(b), after such mobile home has been once subject to the payment of a sales tax by virtue of Section 3.04.270, shall be exempt from taxation under this sales tax.

X. The purchase price of electric-powered motor vehicles, including both the original and all subsequent purchases of such vehicles, and the purchase of batteries and controls required for the operation and maintenance of such vehicles shall be exempt from taxation under this sales tax; and the storage, use, or consumption of such vehicles, batteries, and controls shall be exempt from taxation under the use tax of this Chapter. This subsection (X) is repealed, effective July 1, 1987.

Y. In any case in which a sales tax has been imposed under this Chapter on lubricating oil used other than in motor vehicles, the purchaser thereof shall be entitled to a refund equal to the amount of

the City sales tax paid on that portion of the sale price thereof which is attributable to the federal excise tax imposed on the sale of such lubricating oil. In any case in which a use tax has been imposed under this Chapter on lubricating oil used other than in motor vehicles, the payer of such tax is entitled to a refund equal to the amount of such use tax paid on that portion of the amount upon which the use tax was imposed which is attributable to the federal excise tax paid on such lubricating oil. The refund allowed under this subsection (2) shall be paid by the City upon receiving evidence that the purchaser has received under section 6424 of the federal "Internal Revenue Code of 1954" as from time to time amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund shall be made upon such forms as shall be prescribed and furnished by the City which forms shall contain such information as the City may prescribe.

Z. All sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale or profit and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores shall be exempt from taxation under this sales tax, and the storage, use, or consumption of such property shall be exempt from taxation under the use tax of this Chapter.

AA. All sales and purchases of taxable personal property on which a specific ownership tax has been paid or is payable shall be exempt from such City sales tax when such sales meet both of the following conditions: (1) The purchaser is a non-resident of, or has its principal place of business outside the City; and (2) Such personal property is registered or is required to be registered under an address outside of the City.

BB. Effective July 1, 1984, all sales of aircraft used or purchased for use in interstate commerce by a commercial airline.

CC. All sales in which the tangible personal property sold is delivered by the retailer 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, shall be exempt from the provisions of this Chapter.

DD. The sale of construction and building materials, as the term is used in C.R.S. 29-2-109, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid.

EE. 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 3%. 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 3%.



FF. Sales made by Delta County nonprofit civic organizations or churches in the course of occasional sales or fund-raising drives with purchase price of less than \$20.00.

GG. All sales of newspapers.

HH. 1. (a) All sales and purchases of farm equipment shall be exempt from taxation under this Chapter.

(b) (i) Any farm equipment under lease or contract shall be exempt from taxation under this Chapter if the fair market value of such equipment is at least one thousand dollars and the equipment is rented or leased for use primarily and directly in any farm operation.

(ii) The lessor or seller of such farm equipment shall obtain a signed affidavit from the lessee, renter, or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation.

2. For purposes of this subsection HH:

(a) "Attachments" means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(b) "Farm equipment" means farm tractors, as defined in section 42-1-102(33), C.R.S., implements of husbandry, as defined in section 42-1-102(44), C.R.S. , and irrigation equipment having a per unit purchase price of at least one thousand dollars. "Farm equipment" also includes, regardless of purchase price, attachments and baling wire, binders, twine and surface wrap used primarily and directly in any farm operation. On and after July 1, 2000, "farm equipment" also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this subparagraph (b), all shipping pallets or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. "Farm equipment" does not include:

(i) Vehicles subject to the registration requirement of section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used;

(ii) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;

(iii) Maintenance and janitorial equipment and supplies; and

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

(c) "Farm operation" means the production of any of the following products for profit, including but not limited

to a business that hires out to produce or harvest such products:

- (i) Agricultural, viticultural, fruit, and vegetable products;
- (ii) Livestock, as defined in section 30-26-102(5.5);
- (iii) Milk;
- (iv) Honey; and
- (v) Poultry and eggs.

(Ord. 1, §1(part), 1986; Ord. 3, §2, 1988; Ord. 8, §1, 1991; Ord. 12, §3, 1991; Ord. 26, 2001)

#### 3.04.090 Disputes and refunds.

A. A refund shall be made, or a credit allowed, for the tax paid under dispute by any purchaser who has an exemption as in this Chapter provided. Such refund shall be made by the City after compliance with the following conditions precedent: (1) Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed; (2) Application for refund of taxes paid in error or by mistake shall be made within three years after the date of purchase; (3) Applications 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 be made upon such forms as shall be prescribed by the City, which forms shall contain such information as City shall prescribe.

B. Upon receipt of such application, the City shall examine the same with all due speed and shall give notice to the applicant by order in writing of the decision thereon.

C. Aggrieved applicants, within 20 calendar days after such decision is mailed to them, may petition the City Manager for a hearing on the claim in the manner provided in Sections 3.04.180 and 3.04.190.

D. The right of any person to a refund under this Section 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.

E. The burden of proving that sales, services, and commodities on which tax refunds are claimed, are exempt from taxation under this Chapter, or were not at retail, shall be on the one making such claim. Should the applicant for the refund be aggrieved at the final decision of the City Manager, he may proceed to have the same reviewed in the manner provided for review of other decisions of the City Manager in Sections 3.04.180 and 3.04.190. (Ord. 1, §1(part), 1986; Ord. 12, §4(part), 1991)

#### 3.04.100 Return confidential.

A. Except in accordance with court order, as necessary in any action brought or defended by the City, or as otherwise herein

provided, the City shall not release any return for inspection or copying, or divulge any information gained from any return filed under the provisions of this Chapter from which the volume of sales or amount of taxes paid of any individual retailer can be determined.

B. Sales and use tax returns shall be considered confidential financial information under the State Public Records Act.

C. Nothing contained in this Section shall be construed to prohibit the delivery to a person or his duly authorized representative of a copy of any return or report filed by him in connection with his own tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, nor to prohibit the inspection, reproduction and use by the City in the administration and enforcement of this Chapter.

D. Reports and returns shall be preserved for three (3) years and thereafter until the City Manager orders them destroyed. (Ord. 1, §1(part), 1986)

#### 3.04.110 Review of return.

A. As soon as practicable after the return is filed, the City shall examine it. If it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return to be due, the tax shall be recomputed.

B. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same persons.

C. If the amount paid is less than the amount due, the difference, together with interest thereon as provided in Section 3.04.120, shall be paid by the vendor twenty (20) calendar days after written assessment and demand to him from the City. The taxpayer may appeal such assessment to the City Manager pursuant to Section 3.04.180. (Ord. 1, §1(part), 1986; Ord. 12, §4(part), 1991)

#### 3.04.120 Interest on underpayment.

A. If any amount of sales or use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 3.04.070 shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is mailed by the City.

B. Interest prescribed under this Chapter 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.

C. If any portion of a tax is satisfied by credit of an overpayment, then 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.

D. Interest prescribed under this Chapter on any sales or use 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. (Ord. 1, §1(part), 1986)

3.04.130 Sales or use tax--Deficiency due to negligence. If any part of the deficiency in payment of the sales or use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the City with knowledge thereof, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under 3.04.070, in addition to the interest provided by 3.04.120 on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable twenty calendar days after written notice and demand to him by the City. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred 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 twenty calendar days after written notice and demand by the City and an additional three percent per month on said amount shall be added from the date the return was due until paid. (Ord. 1, §1(part), 1986; Ord. 12, §4(part), 1991)

3.04.140 Investigations and hearings.

A. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the City may audit the business records and examine all relevant books, papers, records, or memoranda of any such person at his place of business, or elsewhere, and it shall be the duty of such person to make such relevant information available during reasonable hours for the examination of the City. In the event the City cannot ascertain the correctness of the return or the amount of tax due by such examination, the City may hold further investigations and hearings concerning any matters covered by this Chapter and may issue subpoenas to require the attendance and testimony of any person or the production of any documents. The City Manager or his duly authorized deputies shall have power to administer oaths to such persons.

B. The City Manager or any party in an investigation or hearing before the City Manager may take the depositions or witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in Courts of this State and to that end the City may compel the attendance of witnesses and the production of books, papers, records or memoranda.

C. The District Court, upon the application of the City Manager, may enforce any subpoena issued by the City for attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony.

D. If the results of any audit indicate that taxes paid were in excess or less than what was due, the procedures of Sections 3.04.110 and 3.04.180 shall be followed. Interest and penalties shall be assessed pursuant to 3.04.120 and 3.04.140. Amounts due may be collected as provided in this Chapter for any delinquent taxes. (Ord. 1, §1(part), 1986)

3.04.150 Record of sales. It shall be the duty of every person engaged or continuing in business in this City, for the transaction of which a license is required under this Chapter, to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable. Each retailer shall keep sufficient information to establish deductions for wholesale sales, including purchaser's name and state sales tax license number, and to establish deductions for sales to tax-exempt entities, including state tax exempt numbers of the purchaser. Exemptions or deductions taken without documentation shall be disallowed. It shall be the duty of every person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at any time by the City. (Ord. 1, §1(part), 1986)

3.04.160 Tax lien.

A. The tax imposed by this Chapter 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, excepting stock of goods sold or for resale in the ordinary course of business, and shall tax precedence on all such property over other liens or claims of whatsoever kind or nature.

B. Any retailer who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return as provided in this Chapter, within ten (10) days after the date he sold his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the City showing that the taxes have been paid, or a certificate that no taxes are due.

C. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided and the taxes shall be due and unpaid after the ten (10) day period allowed, he, as well as the vendor, 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 retailer under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale or otherwise, takes same subject to the lien for any delinquent sales tax owed by such retailer, and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

D. Whenever the business or property of any taxpayer subject to this Chapter shall be placed in receivership, bankruptcy or

assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by the Chapter and for which said retailer is in any way liable under the terms of this Chapter shall be a prior and preferred claim against all the property of said taxpayer, except as to pre-existing 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 Section 3.04.170 on the property of the taxpayer, other than 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 Chapter under process or order of any Court, without first ascertaining from the City the amount of any taxes due and payable under this Chapter, and if there be any such taxes due, owing or unpaid, it shall be the duty of such officer to pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other pre-existing claims or liens as above provided. For the purposes of this Chapter, the term "taxpayer" includes "retailer." (Ord. 1, §1(part), 1986)

3.04.170 Recovery of taxes, penalties and interest.

A. All sums of money paid by the purchaser to the retailer or seller as taxes imposed by this Charter shall be and remain public money, the property of the City, in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the City until paid to the City, and for failure to pay the same to the City, such person shall be punished for a violation hereof.

B. (1) If any person neglects or refuses to make a return in payment of the tax or to pay any tax, as required by this Chapter, the City shall make an estimate based on such information as may be available of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of \$15 for such failure or 10% thereof and interest on such delinquent taxes at the rate set under Section 3.04.070, plus 1/2% per month from the date when due, not exceeding 18% in the aggregate. Promptly thereafter, the City shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be sent by first class mail, directed to the last address of such person on file with the City.

(2) Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the City twenty (20) calendar days from the date of mailing; provided, however, that within said twenty (20) calendar day period such delinquent taxpayer may petition the City Manager, pursuant to Section 3.04.180 for a revision or modification of such assessment.

C. If any taxes, penalty or interest imposed by this Chapter and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided herein, are not paid within five (5) days after the same are due, the City shall issue a notice, 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 pre-existing 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 herein provided on property of the taxpayer, other than goods, stock in trade, and business fixtures of such taxpayer. Said notice shall be on forms prepared by the City and shall be verified by the City Manager or his duly qualified deputy or any duly qualified agent of the City, whose duties are the collection of such tax, and may be filed in the office of the Clerk and Recorder of any County in this 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 a notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice is filed or not, the City may issue a warrant directed to any duly authorized revenue collector or to the Sheriff of any County in the State commanding him to levy upon, seize and sell sufficient of the real and personal property of the tax debtor found within his county for the payment of the amount due, together with interest, penalties and costs, subject to valid pre-existing claims or liens as above provided.

D. Such revenue collector or Sheriff shall forthwith levy upon sufficient property of the taxpayer, or any property used by such taxpayer in conducting his retail business, and said property so levied upon shall be sold in all respects, with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a Court of record, and the remedies of garnishments shall apply. The Sheriff shall be entitled to such fees in executing such warrants as are allowed by law for similar services.

E. Any lien for taxes as shown on the records of the county clerks and recorders as herein provided shall, upon the payment of all taxes, penalties and interest covered thereby, be released by the City in the same manner as mortgages or judgments are released.

F. The City Manager may also treat such taxes, penalties or interest due and unpaid as a debt due the City from the vendor. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the City may recover at law the amount of such taxes, penalties and interest in any County or District Court of the County wherein the taxpayer resides or has his 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, as herein provided, shall be prima facie proof of the amount due. Such actions may be actions in attachments, and writs of attachment may be issued to the sheriff, and in any such proceeding no bond shall be required of the City, nor shall any sheriff require of the City an indemnifying bond for executing the Writ of Attachment, or Writ of Execution upon any judgment entered in such proceedings; and the City may prosecute appeals in such cases without the necessity of providing bond therefor. It shall be the duty of the City Attorney when requested by the City Manager to commence action for the recovery of

taxes due under this Chapter, and the remedy shall be in addition to all other existing remedies, or remedies provided in this Chapter.

G. In any action affecting the title to real estate or the ownership or rights of possession of personal property, the City may be made a party defendant for the purpose of obtaining a judgment or determination of its lien upon the property involved therein.

H. The City Manager is hereby authorized to waive, for good cause shown, any interest or penalty assessed as in this Chapter. (Ord. 1, §1(part), 1986; Ord. 12, Sec, 4(part), 1991)

#### 3.04.180 Appeals to City Manager.

A. Any person aggrieved by an assessment made upon him or refund denied by the City may apply to the City Manager by petition in writing within twenty (20) calendar days after the notice of assessment or denial is mailed to him for a hearing and a correction of the amount of the tax so assessed, in which petition he shall set forth the reasons why the amount by which such tax should be reduced or refund granted. The City Manager shall notify the petitioner in writing of the time and place fixed by him for such hearing. After such hearing, the City Manager shall make such order in the matter as is just and lawful.

B. Whenever the City determines pursuant to subsection (A) that sales or 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 sales and 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 C.R.S. 29-1-106.1(3). The taxpayer shall also have the right to elect a state hearing on the City denial of such taxpayer's claim for a refund of sales or use tax paid.

C. The hearing before the City Manager 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 Manager shall hold such hearing and issue the final decision thereon within ninety days after the City's receipt of the taxpayer's written request therefor, except the City may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer; but, in any event, the City shall hold such hearing and issue the decision thereon within one hundred eighty days of the taxpayer's request in writing therefore. (Ord. 1, §1(part), 1986; Ord. 12, §4(part), 1991)

3.04.190 Appeals. A. The taxpayer may elect a state hearing on the City Manager's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this section.

B. As used in this section, "state hearing" means a hearing before the executive director of the department of revenue or delegate thereof as provided in C.R.S. 29-2-106.1(3).

C. The taxpayer shall request the state hearing within thirty days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local



remedies or if he fails to request such hearing within the time period provided for in this subsection (C). For purposes of this subsection (C), "exhaustion of local remedies" means:

(1) The taxpayer has timely requested in writing a hearing before the City Manager and such City Manager has held such hearing and issued a final decision thereon, pursuant to 3.04.180.

(2) The taxpayer has timely requested in writing a hearing before the City Manager and the City Manager has failed to hold such hearing or has failed to issue a final decision thereof within the time periods prescribed in subsection 3.04.180(C).

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

E. 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 notice or denial of a claim for refund to the District Court or the County of Delta as provided in C.R.S. 29-2-106.1(8); provided the taxpayer complies with the procedures set forth in subsection (C) of this Section.

F. If the City reasonably finds that the collection of sales or use tax will be jeopardized by delay, the City may utilize the procedures set forth in C.R.S. 39-21-111. (Ord. 1, §1(part), 1986)

3.04.200 Notices. Except as otherwise provided, all notices required to be given to the retailer shall be in writing and either mailed first class, postage prepaid, addressed to his latest mailing address on file with the City, or served upon the retailer as provided for service of process in civil actions. (Ord. 1, §1(part), 1986)

3.04.210 Authorization of use tax. There is hereby imposed and shall be collected from every person in this City a tax or excise at the rate of 3% of storage or acquisition charges or costs for the privilege of storing, using or consuming in this City any articles of tangible personal property purchased at retail. The tax shall be computed and collected in accordance with appropriate schedules promulgated by the City Manager. (Ord. 1, §1(part), 1986; Ord. 8, §1, 1991)

3.04.220 Exemptions. This tax or excise on the storage, consumption and use of tangible personal property is declared to be supplementary to the City tax on retail sales as provided in this Chapter and shall not apply to the following:

A. To the storage, use or consumption of any tangible personal property, the sale of which is subject to the City retail sales tax as provided herein.

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

C. To the storage, use or consumption of motor fuel upon which there has accrued or has been paid the motor fuel tax prescribed by the Colorado Motor Fuel Tax Law of 1933, and amendments thereto, and which is not subject to refund.

D. To the storage, use or consumption of tangible personal property brought into the City by a nonresident thereof for his own storage, use or consumption while temporarily within the City, nor to the personal property of a resident, if such personal property was purchased prior to becoming a resident of the City.

E. To the storage, use or consumption of tangible personal property of the United States or the State or its institutions or its political subdivisions, in their governmental capacities only; or by religious, charitable or eleemosynary corporations in the conduct of their regular religious, charitable or eleemosynary functions.

F. To the storage of construction and building materials.

G. 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 of another statutory or home rule municipality legally imposed on the purchaser or user equal to or in excess of 3%. A credit shall be granted against the City's use tax with respect to the person's storage, use, or consumption in the City of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of credit shall not exceed 3%.

H. To the use or consumption of tangible personal property within the City which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used with the State for the principal purpose for which it was purchased.

I. Proration as Applied to Certain Construction Equipment:

(1) Construction equipment which is located within the boundaries of the City for a period of more than thirty consecutive days shall be subjected to the full applicable use tax of the City.

(2) Construction equipment which is located within the boundaries of the City for a period of thirty consecutive days or less shall be subjected to the City's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator is twelve, and the result shall be multiplied by 3%.

(3) Where the provisions of subsection (I)(2) are utilized, the credit provisions of subsection 5-15-22(G) shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule municipalities on any such equipment equal 3%.

(4) In order to avail himself of the provisions of subsection (I)(2) of this Section, the taxpayer shall comply with the following procedure:

(a) Prior to or on the date the equipment is located within the boundaries of the City, the taxpayer shall file with the City an equipment declaration on a form provided by the City. Such declaration shall state the dates on which the taxpayer anticipates

the equipment will be located within and removed from the boundaries of the City, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the City.

(b) The taxpayer shall file with the City an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the boundaries of the City for a project of less than ninety days duration, no later than ten days after substantial completion of the report.

(c) The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under \$2,500.

(5) If the equipment declaration is given as provided in subsection (I)(4) of this Section, then as to any item of construction equipment for which the customary purchase price is under \$2,500 which was brought into the boundaries of the City temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as 3%, and that such local sales or use tax was previously paid. In such case, the burden of proof in any proceeding before the City, the executive director of the department of revenue, or the district court, shall be on the City to prove such local sales or use tax was not paid.

(6) If the taxpayer fails to comply with the provisions of subsection (I)(4) of this Section, the taxpayer may not avail himself of the provisions of subsection (I)(2) of this Section and shall be subject to the provisions of subsection (I)(1) of this Section. However, substantial compliance with the provisions of subsection (I)(4) of this Section shall allow the taxpayer to avail himself of the provisions of subsection (I)(2) of this Section.

J. To the storage, use or consumption of cigarettes; drugs which would be disbursed by prescription; and prosthetic devices.

K. To the storage, use or consumption of tangible personal property for use in the business of manufacturing, 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 finished product and the container, label or the furnished shipping case thereof.

L. To the storage, use or consumption of electricity, coal, coke, fuel oil or gas for use in processing, manufacturing, mining, refining, irrigation, telephone, telegraph, radio and television communication, street and railroad, transportation services and all industrial uses.

M. To the storage and use of tangible personal property purchased from a nonresident retailer by a common carrier, public utility company or a construction company being a resident of the City or doing business in the City, which is stored in the City but not used or consumed in the City. (Ord. 1, §1(part), 1986; Ord. 8, §1, 1991)

3.04.230 Monthly return, collection.

A. Every person subject to the provisions of Section 3.04.210 of this Chapter, who has not paid the sales and use tax imposed hereby to a retailer, on or before the twentieth day of each month, shall make to the City on forms provided by the City a return showing in detail the tangible personal property stored, used, or consumed by him within the City in the preceding calendar month which is subject to the tax herein imposed, and on which the tax has not been paid to a retailer. Such return shall be verified by oath or affirmation of the taxpayer or his agent and shall be accompanied by a remittance of the tax shown thereon to be due. Returns shall be reviewed by the City pursuant to the procedure of this Chapter for reviewing sales tax returns.

B. Every retailer doing business in the City and making sales of tangible personal property for storage, use, or consumption in the City, and not exempted as provided in Section 3.04.220, at the time of making such sales or taking the orders therefor, or, if the storage, use, or consumption of such tangible personal property is not then taxable under this Chapter, then at the time such storage, use, or consumption becomes taxable under this Chapter, shall collect the tax imposed by Section 3.04.210 from the purchaser and shall give to the purchaser a receipt therefor, which receipt shall identify the property, the date sold or the date ordered, and the tax collected and paid. The tax required to be collected by such retailer from such purchaser shall be displayed separately from the advertised price listed on the forms or advertising matter on all sales checks, orders, sales slips, or other proof of sales.

C. It is unlawful for such retailer or agent to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by such retailer or agent, 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. The tax required to be collected by such retailer or agent shall be remitted to the City in like manner as otherwise provided in this Chapter for the remittance of sales taxes collected by retailers, and all such retailers or agents collecting the tax imposed by Section 3.04.210 shall make returns on forms provided by the City at such times and in such manner as is provided for the making of returns in the payment of the sales taxes. The procedure for assessing and collecting said taxes from such retailers or agents, or from the user when not paid to a retailer or agent, shall be the same as provided in this Chapter for the collection of sales taxes, including collection by distraint warrant, and said taxes due and owing from any retailer or agent for the storage, use, or consumption of tangible personal property shall bear interest and be subject to the same penalties as is provided in this article for nonpayment or delinquencies of sales tax.

D. All sums of money paid by the purchaser to the retailer as taxes imposed by this article shall be and remain public money, the property of the City in the hands or such retailer, and he shall hold the same in trust for the sole use and benefit of the City until paid

to the City. For failure to so pay to the City, such retailer shall be punished as provided by law. (Ord. 1, §1(part), 1986)

3.04.240 Tax constitutes lien--Exemption from lien.

A. The tax imposed by Section 3.04.210 shall be a first and prior lien on the tangible personal property stored, used, or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as required by Section 3.04.170 and when such tax is collected by retailers or agents, shall be a first and prior lien on all the stock of goods or business fixtures of or used by such retailer excepting goods sold in the ordinary course of business, which lien shall have precedence over all other liens, whatsoever kind or nature, except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

B. Upon default of payment thereof, the City, after demand upon the person owing such tax, may bring an action in attachment and seize property as authorized by this Section to secure the payment of said tax, interest, and penalties. In any such proceeding, no bond shall be required of the City, nor shall any sheriff require from the City an indemnifying bond for executing the writ of attachment or levy, and no sheriff shall be liable in damages when action in accordance with such writs. The remedies provided in this Section shall be in addition to all other remedies. (Ord. 1, §1(part), 1986)

3.04.250 Use tax--Neglect or refusal to make return or to pay.

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the City shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent thereof and interest on such delinquent taxes at the rate imposed under Section 3.04.070 plus one-half of one percent per month from the date when due. Such amount shall be processed in the same manner as assessments for sales taxes under this Chapter. (Ord. 1, §1(part), 1986)

3.04.260 Penalty interest on unpaid use tax. Any use tax due and unpaid shall be a debt to the City, and shall draw interest at the rate imposed under Section 3.04.250 in addition to the interest provided by Section 3.04.070, from the time when due until paid. (Ord. 1, §1(part), 1986)

3.04.270 Vehicles. Any resident natural person who purchases any motor vehicle or other vehicle for which registration is required, whether new or used, outside the corporate limits of the City for use or storage within this City, shall be subject to the use tax imposed by Section 3.04.210, and shall make a return showing such transaction to the City, pay the use tax applicable thereto as provided in this Chapter, or shall pay such use tax to the County Clerk when

registering said vehicle. Registration of any vehicle at any address outside the City by a City resident or by a business with a principal place of business within the City with respect to a vehicle to be stored or used in the City shall constitute prima facie evidence of an attempt to willfully evade payment of City Sales and Use Tax. (Ord. 1, §1(part), 1986)

3.04.280 Limitations.

A. No sales or use tax, or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the City may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

B. In the case of failure to file a return, the sales tax, use tax, or both, may be assessed and collected at any time. (Ord. 1(part), 1986)

3.04.290 Construction materials.

A. The sales and use tax imposed by this Chapter upon construction materials utilized in construction projects for which a City building, plumbing or mechanical permit is required shall be collected in accordance with this Section.

B. At the time the permit is issued, the three percent (3%) sales and use tax shall be assessed and collected upon the following percentages of the construction value (excluding land):

(1) On single-family residential new construction, fifty percent (50%) of the construction value.

(2) On other construction, the Building Inspector shall determine the percentage of construction value reasonably attributable to construction materials taxable by this Chapter for the particular type of construction involved.

C. When sales and use tax on construction materials has been prepaid pursuant to this Section, additional City sales and use taxes shall not be required to be paid nor shall any vendor be required to collect additional sales tax, when the construction materials are purchased, on the conditions that:

(1) The vendor delivers such materials to the site of the job for which the building permit was issued.

(2) The purchaser provides proof of the prepayment to the vendor in accordance with regulations issued by the City Manager.

D. Vendors of building materials shall keep records as required by the City Manager of the amount of sales made and charged

against each building permit for which sales and use taxes have been prepaid in accordance with this Section.

E. It is unlawful to use, or to aid or abet the use of a prepayment exemption granted in accordance with this Section to evade paying sales and use taxes on construction materials.

F. The exemption granted by subsection "C" for any permitted project shall terminate upon the issuance of an occupancy permit or upon expiration of a period of one year from the date of the issuance of the building permit, whichever occurs sooner; provided, however, the exemptions of subsection "C" may be extended upon a showing that the project for which the permit was issued has not been completed.

G. This method of sales and use taxes does not satisfy sales and use taxes imposed on furnishings, appliances and equipment such as stoves, refrigerators, drapes, carpets, rugs, furniture, etc., or anything other than the construction materials used in the project. (Ord. 1, §1(part), 1986; Ord. 5, 1991; Ord. 8, §1, 1991)

3.04.300 Sales and use tax--Map of municipal boundaries. The City 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 and 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 to it. (Ord. 1, §1(part), 1986)

3.04.310 Penalty and remedies.

A. It shall be unlawful to willfully fail or refuse to make any sales or use tax return required in this Chapter, to willfully make a false or fraudulent sales or use tax return, to willfully fail to pay any sales or use tax owed, to aid or abet another in an attempt to evade payment or any sales or use tax, or to violate any provision of this Chapter.

B. Any person convicted of such a violation may be punished by a fine of up to \$300, or a jail sentence of up to 90 days, or by both such fine and imprisonment; provided, however, no person under the age of 18 years shall be subject to any term of imprisonment, except for contempt of Court.

C. Nothing in this Chapter shall preclude the City from utilizing any other applicable penalties or remedies for the collection or enforcement of sales or use taxes. (Ord. 1, §1(part), 1986)

3.04.320 Use of proceeds of tax.

A. The tax moneys collected pursuant to this Chapter, as amended, from the first one percent of sales tax shall be used as follows:

(1) One hundred percent of the net revenue derived from such one percent City sales tax shall be put in the City-wide capital improvement fund.

(2) The use of all moneys derived from this first one percent of tax shall be for capital equipment and improvements within

the City, including but without limitations, sanitary sewers, storm sewers, subsurface drainage, streets, alleys, curbs, gutters, construction equipment and other public improvements; or these moneys may be transferred to another fund for expenditure of any of the aforementioned uses.

(3) An annual audit and statement shall be issued showing all expenditures, revenue and balance of funds. (Ord. 1, §1(part), 1986)

3.04.330 Amendments. The City Council may, by a majority vote, amend, alter, change and repeal this Chapter in whole or in part without submitting such change or repeal to the qualified electors for their approval; except, however, that the three percent rate herein imposed shall not be changed except upon the approval of a majority of the qualified electors of the City voting thereon at a regular or special election for the purpose of adopting or rejecting such amendment. (Ord. 1, §1(part), 1986; Ord. 8, §1, 1991)

3.04.340 Vendors' fee. (Repealed by Ord. 46, §1, 2001)

3.04.350 Coordinated audit.

A. Any taxpayer licensed in this City pursuant to Section 3.04.030, and holding a similar sales tax license in at least four other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

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

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

D. If this City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (C), the Finance Director shall so notify the Finance Director of the municipality whose notice of audit prompted the taxpayer's request within ten days after receipt of the taxpayer's request for a coordinated audit. The Finance Director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of



the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

E. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's Finance Director shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The Finance Director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by and 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 this Section;
3. When a taxpayer refuses to promptly sign a waiver of any provisions that could limit, based upon passage of time, the City's right to recover for a portion of the audit period; or
4. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in paragraph (B). (Ord. 12, §5(part), 1991)

#### 3.04.360 Intercity 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 herein, "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 City that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.

D. The City may make a written claim for recovery directly to the municipality that received the tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

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

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 thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. (Ord. 12, §5(part), 1991)

#### 3.04.370 Notice of sales and use tax ordinance amendment.

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

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

C. Failure of the City to file such ordinance or ordinance amendment pursuant to this Section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto. (Ord. 12, §5(part), 1991)

3.04.380 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 officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise. (Ord. 12, §5(part), 1991)

## Chapter 3.08

### TELEPHONE UTILITIES TAX

#### Sections:

- 3.08.010 Levy of tax.
- 3.08.020 Time of payment.
- 3.08.030 Failure to pay.
- 3.08.040 Local purpose.
- 3.08.050 Filing statement.
- 3.08.060 Failure to file statement.

3.08.010 Levy of tax. There is levied on and against each telephone company operating within the City a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the City and of supplying local exchange telephone service to the inhabitants of the City. The amount of the tax levied shall be ten thousand five hundred dollars for each calendar year until such time as the City Council repeals or amends this Section, or \$4.50 per local exchange account, whichever is less. (Ord. 6, §1(a), 1980; Ord. 17, §1, 2001)

3.08.020 Time of payment. The tax levied by Section 3.08.010 shall begin to accrue on the first day of April, 1980, and shall be due and payable in four equal quarterly installments, each installment to be paid on the last business day of the months of March, June, September and December. (Ord. 6, §1(c), 1980)

3.08.030 Failure to pay. If each telephone company, subject to the provisions of this Chapter, shall fail to pay the taxes provided for in this Chapter, the full amount thereof shall be due and collectable from such company, and the same together with an addition of ten percent of the amount of taxes due shall and is declared to be a debt due and owing from each telephone 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 of law to collect the debt. (Ord. 1, §5, 1979; Ord. 17, §1, 2001.)

3.08.040 Local purpose, The tax herein provided 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 Chapter be construed to mean that any telephone utility company is issued a franchise by the City. (Ord. 1, §6, 1979)

3.08.050 Filing statement. Each telephone company, subject to this Chapter, shall file with the finance director, in such form as may be required, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City. Such statement shall be filed annually, for each calendar year, and shall be due by the end of February of each year for the previous calendar year. (Ord. 1, §7, 1979; Ord. 17, §1, 2001)

3.08.060 Failure to file statement. If any officer, agent or manager of each telephone company shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 3.08.050, the officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars nor more than three hundred dollars, provided that each day after such statement becomes delinquent during which the 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. (Ord. 1, §8, 1979; Ord. 17, §1, 2001)