

ARTICLE 2

Sales Tax

Sec. 4-2-10. Short title.

This Article shall be known and cited as the *Town of Crested Butte Sales Tax Ordinance*. (Ord. 26 §2, 2003)

Sec. 4-2-20. Purpose.

The purpose of this Article is to impose a sales tax on all retail sales, certain leases of tangible property and the furnishing of certain services as hereafter defined, within the Town, and to provide to the Town the authority and administrative mechanisms to collect and administer said sales taxes. All sales, leases and purchases of tangible personal property and the furnishing of certain services, as defined in this Article, are taxable unless specifically exempted in this Article or by other statutory authority. The sales tax imposed by this Article applies to each transfer of ownership, possession and control of such property, and may occur more than once during the life of the property. (Ord. 26 §2, 2003)

Sec. 4-2-30. Definitions.

The following words and phrases, as used in this Article, shall have the following meanings:

Access services means the services furnished by a local communications exchange company to its customers, which provides telecommunications services that allow it, in turn, to provide such telecommunications services.

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

Automotive vehicle means any vehicle or device in, upon or by which any person or property is, or may be, transported or drawn by a public highway, or any device used or designated 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 solely by human power or those used exclusively upon stationary rails or tracks.

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

Charitable organization means any entity which is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and 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 publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

Construction or building 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 or building materials* include, but are not limited to, such things as: asphalt, bricks, builder's hardware, caulking materials, cement, concrete, conduit, electrical 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, pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, 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, wire netting and screen, water mains and meters, and wood preservatives. The above materials, when used for forms, or other items that do not remain as an integral or inseparable part of a completed structure or project, are not *construction or building materials*.

Consumer means any individual person, or person engaged in business in the Town, who uses, stores, distributes or otherwise consumes in the Town tangible personal property or taxable services purchased from sources inside or outside the Town.

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 for the person to whom the medicine, drug or poison is offered; and directions, if any, to be placed on the label.

Engaged in business in the Town means performing or providing services, or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the Town. *Engaged in business in the Town* includes, but is not limited to, any one (1) 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 Town;
- b. Sends one (1) or more employees, agents or commissioned sales persons into the Town to solicit business, or to install, assemble, repair, service or assist in the use of its products or for demonstration purposes;
- c. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location with the Town;
- d. Owns, leases, rents or otherwise exercises control over real or personal property within the Town; or
- e. Makes more than one (1) delivery into the Town within a twelve-month period.

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 meet all of the following conditions:

- a. Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;
- b. Is transferred by said person along with and as a part of the finished product to the purchaser; and

c. Is not returnable to said person for re-use.

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 that are being abandoned.

Finance Director means the Finance Director (department head) for the Town, or such other person designated by the Town.

Food means food for domestic home consumption as defined in 7 U.S.C. § 2012(g), for purposes of the federal food stamp program as defined in 7 U.S.C. § 2012(h), except that *food* does not include carbonated water marketed in containers, chewing gum or seeds and plants to grow food.

Gross taxable 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, excluding the fair market value of exchanged property which is to be sold thereafter in the normal course of a retailer's business.

License means a Town sales tax license.

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

Lodging services means the furnishing of rooms or accommodations by any person who, for 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, trailer court and park, condominium, single-family or multi-family residential unit, or similar establishment for a period of less than thirty (30) days under any concession, permit, right of access, license to use, other agreement or otherwise.

Medical supplies means drugs, prosthetic medical and dental appliances, and special beds for patients with neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses (including eyeglass frames) and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient; hearing aids, hearing aid batteries, insulin, insulin measuring and injecting devices and glucose to be used for treatment of insulin reactions; and human whole blood, plasma, blood products and derivatives. This definition excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

Mobile machinery and self-propelled construction equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but 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 highway. 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.

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.

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

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

Preprinted newspaper supplements means inserts, attachments or supplements circulated in newspapers that are primarily devoted to advertising; and the distribution, insertion or attachment of which is commonly paid for by the advertiser.

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

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

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

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

Price or purchase price includes:

a. The amount of money received in cash or due in cash and credits.

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

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

d. The total price charged on credit sales, including finance charges which are not separately stated. Any 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 the promissory note; except when the interest or carrying charge set out separately from

the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

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

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

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

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

Price or purchase price shall not include:

a. Any sales or use tax imposed by the State or by any political subdivision thereof.

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

c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

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

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

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

a. Transfer, either conditionally or absolutely, of title or possession, or both, to tangible personal property;

b. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services.; the utilization of coin-operated devices,

except coin-operated telephones, which do not vend articles of tangible personal property, shall be considered short-term rentals of tangible personal property;

- c. Performance of taxable services; or
- d. Barter or exchange for other property or services, including coupons.

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

- a. A division of partnership assets among the partners according to their interests in the partnership.
- b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets controlled.
- c. The transfer of assets of shareholders in the formation or dissolution of professional corporations.
- d. The dissolution of the pro-rata distribution of the corporation's assets to its stockholders.
- e. A transfer of a partnership interest.
- f. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended.
- g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership.
- h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.
- i. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation.
- j. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation, or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.
- k. The transfer of assets between 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 Subparagraph shall constitute a sale. For the purposes of this Subparagraph, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty

percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

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

Resident (for purposes of refund or rebate) means any person who resided within the Town for the entire calendar year for which a sales tax refund is applied for and who has an annual income of less than twelve thousand dollars (\$12,000.00) and who is either permanently disabled or over sixty-five (65) years of age as of the effective date of this Article. Exceptions are those persons who qualified under Article 4-2, as previously repealed by the initial ordinance codified herein, who had reached the age of fifty-five (55) years of age prior to the effective date of the initial ordinance codified herein and had an annual income of four thousand dollars (\$4,000.00) for qualifying years prior to or including the tax year 2003, or who has been or became permanently disabled prior to, or within, calendar year 2003.

Retail sales means all sales except wholesale sales.

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

a. Auctioneer;

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

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

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

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

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

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

Tangible personal property means corporeal personal property.

Tax means the sales tax due from a retailer.

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

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

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

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

Telecommunications service means the transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information by the use of any means, but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. *Telecommunications service* includes, but is not limited to, basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunications service, specialized mobile radio and two-way pagers and paging services, including any form of mobile two-way communication. *Telecommunications service* does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

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

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.

Town, except when a different municipality is named or implied, means the Town of Crested Butte.

Town Manager means the Town Manager of the Town or an authorized designate.

Transportation includes cars, buses and all other means or instruments of conveyance of passengers and their baggage, irrespective of ownership or any contract, expressed or implied, for the purpose of transporting, carrying or otherwise moving from place to place tourists, residents, skiers, the public at large or any other persons to and/or from the Town, or other points of destination and/or departure in the County and the State, and to conduct, engage in and carry on a transportation service of passengers and baggage of every class and description, and by any means now or hereafter in use. *Transportation* also means to own, operate, maintain, hold, use, purchase, construct, establish, lease or otherwise acquire and sell, or otherwise dispose of or deal with terminal properties, depots, freight and passenger stationhouses, storage facilities, machine and repair shops, machinery, appliance and appurtenances, and any and all other property above described, which may be necessary or useful in connection with the service being rendered, whether individually or in partnership or conjunction with any other person, as the Town may determine from time to time to be in the best interests of its citizens, the public at large and the persons using the transportation service.

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 Town.

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

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

Wholesaler means any person selling to retailers, jobbers, dealers or other wholesalers, for resale, and not for storage, use, consumption or distribution. (Ord. 26 §2, 2003)

Sec. 4-2-40. Rate, imposition, collection and distribution of sales tax.

(a) Sales tax. There is hereby levied in, and shall be paid to and collected by, the Town a tax or excise upon all sales of tangible personal property and services specified in Section 4-2-60(a) in the amount of four percent (4%).

(b) Imposition and collection. The tax specified herein is imposed upon the purchaser. Any seller engaged in business within the Town shall collect the tax and remit it to the Town pursuant to this Article.

(c) Distribution. Except as specified in this Subsection, the Town shall distribute sales tax proceeds on a formula allocating twenty-five percent (25%) to local transportation services, and allocating the remaining seventy-five percent (75%) to the Town's General Fund and Capital Fund at the discretion of the Town Council, based on the projected operational and capital needs of the Town for the ensuing year. Such allocation shall occur as a part of the Town's annual budget process, subject to public hearing, and adopted by resolution on or before the final day for the certification of the ensuing year's property tax levy to the County. Sales tax revenues may also be reallocated during the budget year at the discretion of the Town Council in accordance with the Town's budget policy addressing recessionary circumstances or other unanticipated revenue shortfalls.

(d) Sales tax refund. The Town may provide for a rebate or refund of taxes paid hereunder to residents of the Town who, because of advanced age, disability or income status, are determined by the Town Council to be entitled to such rebate or refund under the following circumstances and conditions:

(1) Any resident as defined in Section 4-2-30 above may, not later than April 15 of every calendar year so long as this Section is in effect, apply on such forms as shall be provided by the Finance Director, for an annual sales tax refund from the Town in the amount of forty dollars (\$40.00) for himself or herself; and, in addition, for every person who is a member of his or her household for whom he or she is entitled to claim a dependent exemption under and pursuant to the Internal Revenue Code, an additional forty dollars (\$40.00).

(2) Each application for a sales tax refund shall be completed completely and truthfully by the applicant or his or her legal designee.

(3) No person claimed as a dependent on the sales tax refund application of another resident shall receive a sales tax refund.

(4) If a sales tax refund is claimed for the same person on more than one (1) sales tax refund application, the Finance Director shall determine the proper resident entitled to claim the sales tax refund.

(5) Each sales tax refund application shall be examined and reviewed by the Finance Director and, upon satisfaction that the applicant qualifies for a sales tax refund, the Town Clerk shall authorize payment to the applicant through the Finance Director.

(e) The taxes imposed in this Article shall continue to be levied and collected until amended or repealed by ordinance.

(f) The taxes imposed in the Article shall be in addition to all other taxes imposed by law. (Ord. 26 §2, 2003)

Sec. 4-2-50. Sales tax schedule.

The sales taxes imposed under this Article shall be computed and collected in accordance with applicable schedules, systems and regulations approved by the Executive Director of the Colorado Department of Revenue. (Ord. 26 §2, 2003)

Sec. 4-2-60. Transactions, items and services subject to sales tax.

(a) The tax levied by Section 4-2-40 above shall apply to the price of the following:

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

(2) Telecommunications service, access services and WATS/800 service.

(3) Installation in the Town of equipment required to receive or transmit telecommunications service, and telecommunications services, whether furnished by public or private corporations or enterprises for all intrastate telephone or telecommunications services, including access and WATS/800 services, sold by local telecommunications service providers originating from or received on telecommunications equipment located within the Town; provided, however, that the charge for the service is billed to a person and to any affiliates residing within or doing business at a location within the Town.

(4) Gas and electric services, whether furnished by governmental, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption and not for resale.

(5) The entire amount charged to any person for lodging services.

(6) The amount paid for all meals and beverages prepared or furnished by any restaurant, eating house, snack bar, catering service, hotel, drugstore, delicatessen or other such carry-out shop, food vending or push cart, mobile vending service, vending machines, club, resort, medical facility or other such place at which meals or food are regularly sold, or sold in conjunction with another business or enterprise.

(7) Admissions and cover charges if tangible personal property such as food or beverages, and/or gifts are received as consideration for the amount paid.

(8) The sale, lease or transfer of computer equipment, programs and software.

(9) Pay, cable or subscription television services sold, purchased, leased, rented, furnished or used, including any equipment rentals furnished as a part of the price or separately stated, if the charge is billed to a person residing in or doing business at a location within the Town.

(10) Coin-operated and other such vending devices that dispense food or tangible personal property.

(11) Linen and towel services.

(12) Dry-cleaning services.

(13) Automotive vehicle repair services and associated automobile parts.

(14) Security devices, smoke or chemical detection equipment and hazardous substance detection equipment, whether purchased or leased.

(15) The sale of food.

(b) For the purpose of this Article, all retail sales are consummated at the place of business of the seller, provider or retailer, unless the tangible personal property sold or provided is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town. The gross receipts from such sales shall include the delivery charges, when such charges are subject to the state sales and use tax imposed by state statute, regardless of the place to which delivery is made.

(c) In the event a retailer or sales provider of tangible personal property has no permanent place of business in the Town or has more than one (1) place of business, the place, places and conditions upon which the retail sales are consummated shall be the same as those in Subsection (b) above for the purpose of the sales tax imposed by this Article. (Ord. 26 §2, 2003)

Sec. 4-2-70. Exemptions from sales tax.

The tax levied by Section 4-2-40 above shall not apply to the following:

(1) Automotive vehicles sold to nonresidents of the Town for registration outside the Town.

(2) Tangible personal property when both of the following conditions exist:

a. The sales are to individuals who reside or businesses which are located outside the Town; and

b. The articles purchased are delivered to the purchaser outside the Town by common carrier, by the conveyance of the seller or by mail, and such articles delivered are used outside the Town.

(3) The sale and purchase of medical supplies, prescription drugs for animals and therapeutic devices.

(4) Cigarettes.

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

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

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

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

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

(10) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.

(11) Motor fuel upon which there has been accrued or paid either gasoline tax or special fuel tax, required by Article 27 of Title 39, C.R.S., and which is not subject to refund.

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

(13) Feed for livestock or poultry, seeds and orchard trees when such products are to be used in the commercial production of livestock or crops.

(14) All wholesale sales.

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

(16) Exempt commercial packaging materials.

(17) Newsprint and preprinted newspaper supplements which become attached to, or inserted in and distributed with, newspapers.

(18) Newsprint and printer's ink for use by publishers and commercial printers.

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

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

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

(22) Tangible personal property sold through coin-operated devices for a price of fifteen cents (\$0.15) or less.

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

(24) Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S.

(25) The sale of recreation services, but not equipment. (Ord. 26 §2, 2003)

Sec. 4-2-80. Exemption; burden of proof.

The burden of proving that any retailer is exempt from collecting or paying sales tax shall be on the retailer under such reasonable requirements of proof as the Town Manager or the Finance Director may prescribe. (Ord. 26 §2, 2003)

Sec. 4-2-90. Deductions from gross sales.

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

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

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

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

(b) Credits from tax due:

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

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

a. When the present owner or user has previously paid a legally imposed sales or use tax on the transaction or item, except that the amount of such credit shall not exceed the amount of tax on such transaction or item computed at the rate established by Section 4-2-40 above.

b. When the present owner or user of construction equipment has not previously paid a legally imposed sales or use tax attributable to any one (1) municipality on the full price of such

equipment, the credit shall be the aggregate value of all such taxes paid on such equipment up to the amount of tax due to the Town on such equipment. (Ord. 26 §2, 2003)

Sec. 4-2-100. Credit sales.

(a) In the case of a sale upon credit, a contract for sale where the price is paid in installments and title does not pass until a future date, a sale secured by a chattel mortgage or a conditional sale, there shall be paid upon each payment that portion of the total tax which the amount paid bears in relation to the total purchase price.

(b) If a retailer transfers, sells, assigns or otherwise disposes of an account receivable, then he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment or other disposition of an account receivable by a retailer to a closely held subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account. (Ord. 26 §2, 2003)

Sec. 4-2-110. Acquisition, inception or cessation of business.

(a) Acquisition of existing business:

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

(2) Purchaser's responsibilities.

a. Any person who purchases an existing business shall be responsible for determining whether there is any tax due from that business and shall withhold from the initial purchase payment an amount sufficient to cover all such tax due, unless the former owner produces a receipt from the Town showing that all tax due has been paid or a certificate from the Town indicating that there is no tax due.

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

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

(b) Cessation of business. Every person engaged in business in the Town who quits doing business in the Town shall file a final return. The reporting period of such return shall end on the last day of business in the Town. (Ord. 26 §2, 2003)

Sec. 4-2-120. Retailer responsible for collection and payment of tax.

Every retailer engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the sales tax rate established by Section 4-2-40 above.

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

a. Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from electing to include in his or her purchase price any tax levied under this Section.

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

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

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

(4) Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect, and the purchaser shall pay, such tax. The purchaser may submit a claim for refund to the Town within sixty (60) days of the date of purchase. Any such tax refunded by the Town will be paid directly to the purchaser. (Prior code 4-7-12; Ord. 26 §2, 2003)

Sec. 4-2-130. Trust status of tax in possession of retailer.

All sales tax collected by any retailer shall be the property of the Town and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town. (Prior code 4-7-13; Ord. 26 §2, 2003)

Sec. 4-2-140. Filing returns; due date.

(a) Every taxpayer shall file a return, whether or not a tax is due, and remit any tax due to the Town on or before the twentieth day of the month following the reporting period. Failure to receive a return does not relieve a taxpayer of his or her legal responsibility for filing a return on or before the due date.

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

(c) For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying the tax due. Such good cause shall not include the retailer's inability to pay taxes due the Town due to other debts incurred by the retailer or his or her business.

(d) No person shall make any false statement in connection with a return. (Prior code 4-7-1; Ord. 26 §2, 2003)

Sec. 4-2-150. Reporting periods.

(a) Unless otherwise approved by the Town, taxpayers must file returns and pay taxes as follows:

(1) Upon approval of the Finance Director, a taxpayer whose monthly tax is ten dollars (\$10.00) or less may file returns and pay tax annually, semi-annually, quarterly or monthly.

(2) Upon approval of the Finance Director, a taxpayer whose monthly tax due is more than ten dollars (\$10.00) and less than twenty dollars (\$20.00) may file returns and pay tax semi-annually, quarterly or monthly.

(3) Upon approval of the Finance Director, a taxpayer whose monthly tax due is more than twenty (\$20.00) and less than forty dollars (\$40.00) may file returns and pay tax quarterly or monthly.

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

For the purpose of the timing of the filing of returns, the amounts considered in Paragraphs (1) through (4) above must be consistent for a period of three (3) consecutive months to be approved for any schedule other than reporting monthly.

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

(c) The reporting period for a vendor selling tangible personal property at a temporary location or site of a special event within the Town shall end on the day the temporary location closes or special event concludes.

(d) If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director. Immediately following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted. (Prior code 4-7-15; Ord. 26 §2, 2003)

Sec. 4-2-160. Duty to keep books and records.

(a) Every person engaged in business in the Town shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which allow the accurate determination of the tax due.

(b) Every person shall provide all such records for audit by the Town during normal business hours. (Prior code 4-7-16; Ord. 26 §2, 2003)

Sec. 4-2-170. License required.

(a) Except as provided in this Section, any person engaged in the business of selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the Town must first obtain a sales tax license. No sales tax license shall be required for any governmental agency or charitable organization which is exempt from the sales tax under this Article. However, although such organizations may be exempt from paying sales taxes on the purchases of tangible personal property, the collection, reporting and payment of appropriate sales taxes to the Town is required on the sale or auction

of tangible personal property even when used for the purpose of fundraising, whether or not a sales tax license is required or has been obtained.

(b) When the business of selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption is transacted by one (1) person at two (2) or more separate locations inside the Town, a separate sales tax license for each place of business shall be required. (Prior code 4-7-17; Ord. 26 §2, 2003; Ord. 14 §§1, 2, 2004)

Sec. 4-2-180. License; application and content.

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

(b) Licenses shall be in effect for two (2) years. Licenses which are granted shall be issued without fee by the Finance Director on January 1 every two (2) years and provided to the license holder as soon as practical thereafter.

(c) Licenses shall be renewed upon renewal of the general business license, or upon completion of a license renewal request.

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

(e) No license shall be transferable. After any sale or acquisition of a business, the new owner shall apply for a new license. (Prior code 4-7-18; Ord. 26 §2, 2003)

Sec. 4-2-190. License cancellation or revocation.

(a) Cancellation:

(1) The Finance Director may cancel any license upon receipt of a written notice that the taxpayer is no longer engaged in business in the Town.

(2) Upon the taxpayer's failure to respond to three (3) consecutive notices of delinquency, the Finance Director shall give notice to the taxpayer that the sales tax license has been cancelled. Such notice shall be in writing and may be either personally delivered to the taxpayer by the Town Marshal, any other law enforcement officer or a Town official designated by the Municipal Judge, or may be delivered to the taxpayer by certified mail with appropriate return receipt.

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

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

(d) No taxpayer shall continue engaging in business in the Town after his or her license has been cancelled or revoked. (Prior code 4-7-19; Ord. 26 §2, 2003; Ord. 14 §3, 2004; Ord. 4 §1, 2009)

Sec. 4-2-200. Authority of Finance Director.

The administration of this Article is hereby vested in the Finance Director, except where otherwise noted.

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

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

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

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

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

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

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

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

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

(8) Notices. Notices required by this Article shall be in writing and delivered in person by the Finance Director or an agent, sent postage paid by certified mail to the last known address of the taxpayer, or served in person by an officer of the Town Marshal's office. (Prior code 4-7-20; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

Sec. 4-2-210. Audit of record.

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

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

(c) Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the Finance Director deems appropriate:

- (1) By comparing the tax reported and paid on returns to the actual tax due.
- (2) By identifying transactions on which the tax was not properly or accurately collected or paid.
- (3) By identifying other irregularities in the calculation of tax due.

(d) Any charitable organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in business in the Town. (Prior code 4-7-21; Ord. 26 §2, 2003)

Sec. 4-2-220. Coordinated audit.

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

(b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, 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 based limitation upon the Town's right to recover tax owed by the taxpayer for the audit period.

(c) Except as provided in Subsection (g) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of any statute of limitations may be audited by the Town during the twelve (12) months after such a request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(d) If the Town desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (c) above, the Finance Director shall so notify the finance director or other proper authority of the municipality whose notice of audit prompted the taxpayer's request for a coordinated audit. The Finance Director shall cooperate with other participating municipalities in arranging the time in 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 the Town, the Finance Director shall facilitate arrangements between the Town and other municipalities participating in the coordinated audit, unless and until an official from another participating municipality agrees to assume this responsibility. The Finance Director shall cooperate with other participating

municipalities to, whenever practical, minimize the number of auditors who will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

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

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

(1) When the proposed audit is a jeopardy audit;

(2) To audits for which a notice of audit was given prior to the effective date of the initial ordinance codified herein;

(3) When a taxpayer refuses to promptly sign a waiver of any pertinent statutes of limitations; or

(4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided for in Subsection (b) above. (Prior code 4-7-21.5; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

Sec. 4-2-230. Tax information confidential.

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

(b) Except as directed by judicial order or as provided in this Section, no Town officer, employee or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee or legal representative of the Town.

(c) If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding. (Prior code 4-7-22; Ord. 26 §2, 2003)

Sec. 4-2-240. Overpayment from returns.

(a) If the amount remitted with the return is more than the tax due as computed from information in such return, the taxpayer shall be notified.

(b) If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the taxpayer may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.

(c) If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period. (Prior code 4-7-23; Ord. 26 §2, 2003)

Sec. 4-2-250. Tax overpayment determined through audit.

If the Town ascertains through audit of a taxpayer's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment. (Prior code 4-7-24; Ord. 26 §2, 2003)

Sec. 4-2-260. Refunds of disputed tax.

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase. (Prior code 4-7-25; Ord. 26 §2, 2003)

Sec. 4-2-270. Claim for refund.

(a) No tax overpayment, except as provided in Subsection 4-2-240(b), shall be refunded unless a claim for refund is signed and submitted to the Town by the taxpayer.

(b) An application for refund of tax shall:

- (1) Be made on a claim for refund form furnished by the Town.
- (2) Be signed by the taxpayer.
- (3) Include adequate documentation of the claim.

(c) The Finance Director shall examine the claim for refund and give written notice to the taxpayer of the amount to be refunded or denied.

(d) Refunds are not assignable. The right of any person to obtain a refund pursuant to this Article shall not be assignable.

(e) No person shall make any false statement in connection with a claim for refund. (Prior code 4-7-26; Ord. 26 §2, 2003)

Sec. 4-2-280. Intercity claims for recovery.

(a) The intent of this Section is to streamline and standardize the 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 Town.

(b) As used herein, *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong jurisdiction.

(c) When it is determined by the Finance Director that sales and use tax owed to the Town has been reported and paid to another municipality or jurisdiction, the Town 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 Town may make a written claim for recovery directly to the municipality or jurisdiction that received the tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for the collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. 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 or jurisdiction, 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 or jurisdiction to which the Town submits a claim for recovery may, for good cause, request an extension of time to investigate the claim. The approval of such extension by the Town shall not unreasonably be withheld.

(e) Within ninety (90) days after receipt of a claim of recovery, the municipality or jurisdiction receiving taxes in error 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 municipality receiving taxes in error shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of the 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) A municipality or jurisdiction claimed to be receiving taxes in error may deny a claim for recovery 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-month period prior to the date the municipality or jurisdiction that was wrongly paid the tax receives the claim for recovery. (Prior code 4-7-27; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

Sec. 4-2-290. Underpayments from returns.

(a) If the amount remitted with a return is less than the tax computed from information in such return, the taxpayer shall be notified.

(b) If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.

(c) If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period. (Prior code 4-7-28; Ord. 26 §2, 2003)

Sec. 4-2-300. Tax deficiencies from failure to file.

(a) If any taxpayer neglects or refuses to obtain a license, the amount of tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.

(b) If any taxpayer neglects or refuses to file a return by the date due, the tax due shall be estimated based on such information as may be available, and a notice of assessment shall be issued.

(c) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment. (Prior code 4-7-29; Ord. 26 §2, 2003)

Sec. 4-2-310. Tax deficiencies determined through audit.

If the Town determines through an audit of the taxpayer's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued. (Prior code 4-7-30; Ord. 26 §2, 2003)

Sec. 4-2-320. Penalties.

A penalty shall be levied for any tax deficiency.

(1) Penalty for late payment. For transactions consummated after the effective date of the initial ordinance codified herein, the penalty for late payment shall be fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater. Additionally, one-half percent (0.5%) of the tax deficiency per month from the date when due, not exceeding eighteen percent (18%) in the aggregate, shall be assessed.

(2) Penalty for fraud. If any tax deficiency is due to fraud or intent to evade the tax, the penalty shall be one hundred percent (100%) of the total tax deficiency.

(3) Abatement of penalty. Any penalty assessed under this Section may be abated by the Finance Director, with the approval of the Town Manager, if the taxpayer submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the Finance Director and the Town Manager find good cause therefor. (Prior code 4-7-31; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

Sec. 4-2-330. Interest.

(a) Interest shall be levied on any tax deficiency.

(b) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. For transactions consummated after the effective date of the initial ordinance codified herein, the monthly interest rate determined by the Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.

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

(d) Interest properly assessed on any tax deficiency shall not be abated. (Prior code 4-7-32; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

Sec. 4-2-340. Notice of assessment.

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

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

(c) The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment.

(d) The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefor exists. (Prior code 4-7-33; Ord. 26 §2, 2003)

Sec. 4-2-350. Protest of notice of assessment or denial of refund.

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

(1) A protest of a notice of assessment issued to a vendor or taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.

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

(b) Any denial of a claim for a refund may be protested by the taxpayer who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund, and shall identify the amount of the refund requested and the basis for the protest.

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

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

(2) Participation in such an informal meeting does not prevent either the taxpayer or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting. (Prior code 4-7-34; Ord. 26 §2, 2003)

Sec. 4-2-360. Hearings.

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

(b) Every hearing shall be held within the Town and before the Finance Director.

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

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

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

(f) Unless the decision of the Finance Director is appealed as provided in this Article, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the finding of fact, conclusions and decision. (Prior code 4-7-35; Ord. 26 §2, 2003)

Sec. 4-2-370. Appeals.

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

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

(c) An appeal of a final decision of the Finance Director in a hearing held pursuant to Section 4-2-360 above shall be commenced within thirty (30) days of such decision. (Prior code 4-7-36; Ord. 26 §2, 2003)

Sec. 4-2-380. Lien for tax due.

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

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

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

(1) Such lien shall be a first and prior lien upon the goods and business fixtures owned or used by any taxpayer, including those under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.

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

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

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

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

(d) Enforcement against real property. If a notice of lien is filed against any real property, the Finance Director may direct the Town Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires. (Prior code 4-7-37; Ord. 26 §2, 2003)

Sec. 4-2-390. Performance of lien.

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

(b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired. (Prior code 4-7-38; Ord. 26 §2, 2003)

Sec. 4-2-400. Release of lien.

Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of the lien with the clerk and recorder of the county in which the lien was filed. (Prior code 4-7-39; Ord. 26 §2, 2003)

Sec. 4-2-410. Civil action to recover tax due.

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

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

(c) If a judgment is obtained by the Town, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Prior code 4-7-40; Ord. 26 §2, 2003)

Sec. 4-2-420. Jeopardy assessment.

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

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

(c) Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of the tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the Town. (Prior code 4-7-41; Ord. 26 §2, 2003)

Sec. 4-2-430. Distraint and sale.

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

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

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

(b) If the taxpayer does not volunteer entry into the premises, the Town Manager may apply to the Municipal Court for a warrant authorizing any employee of the Town to search for and distraint property located within the Town to enforce the collection of the tax due.

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

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

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

(c) Disposal of distrained property:

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

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

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

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

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

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

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

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

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

(8) Any surplus remaining after satisfaction of the tax due, plus any costs of making the distraint and advertising the sale, may be distributed by the Town, first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner or other person having a legal right thereto.

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

(d) Exempt property. Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property described Subsection 4-2-380(c) above.

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

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

(2) The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned. (Prior code 4-7-42; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

Sec. 4-2-440. Status of tax due in bankruptcy and receivership.

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of the Finance Director for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant. (Prior code 4-7-43; Ord. 26 §2, 2003, Ord. 4 §1, 2009)

Sec. 4-2-450. Violations; summons and complaints; penalty.

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

- (1) The failure of any person engaged in business in the Town to obtain a license.
- (2) The failure of any taxpayer to file a timely return or to make timely payment of any tax due.
- (3) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing.
- (4) The evasion of collection of any sales tax by any person, or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

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

(c) Violations of this Article shall be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 4-7-44; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

Sec. 4-2-460. Statute of limitations.

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

(1) Refunds.

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

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

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

(2) Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due.

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

(4) Returns.

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

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

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

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

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

b. If the Town provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Article, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. *Audit period* is the thirty-six-month reporting period preceding the date of the notice of audit.

(7) Performance of an audit does not constitute a waiver or exemption from the statute of limitations, or preclude additional audits of the same period within the parameters of this Section. (Prior code 4-7-45; Ord. 26 §2, 2003; Ord. 4 §1, 2009)