



Commerce City

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Council Communication

File Number: Ord 2499

Agenda Date: 5/1/2023

Version: 1

Status: Agenda Ready

In Control: City Council

File Type: Ordinance

FIRST READING OF AN ORDINANCE AMENDING THE SALES AND USE TAX CODE OF THE CITY OF COMMERCE CITY TO ESTABLISH AN EXEMPTION FROM THE CITY'S SALES AND USE TAX FOR CERTAIN RETAIL DELIVERY FEES AND CARRYOUT BAG FEES ENACTED BY THE STATE OF COLORADO

Summary & Background

Delivery Fee

On July 1, 2022, Colorado imposed a retail delivery fee on all deliveries by motor vehicle to a location in Colorado with at least one item of tangible personal property subject to state sales or use tax.

The retailer or marketplace facilitator that collects the sales or use tax on the tangible personal property sold and delivered, including delivery by a third party, is liable to collect and remit the retail delivery fee. Deliveries include when any taxable goods are mailed, shipped, or otherwise delivered by motor vehicle to a purchaser in Colorado.

Based on the current wording in our Code, this fee is subject to the City's Sales and Use Tax unless an exemption is created.

For every 1,000 deliveries made within the City, \$ 270 in state mandated delivery fees are charged and collected from the buyer. \$ 0 of these fees are remitted directly to the City. All \$ 270 is remitted directly to the State. Commerce City sales or use tax is also due on these fees. The amount due on 1,000 deliveries would be \$ 12.15. The cost to the taxpayer to properly track, report and remit this tax far exceeds the tax collected and remitted. For this reason, exempting the state mandated delivery fee from Commerce City's Sales and Use Tax is recommended. Other home rule municipalities have indicated they will be exempting these fees from their local tax in the future.

Bag Fees

Beginning January 1, 2024, the State of Colorado prohibits Colorado based stores and retail food establishments from providing single-use plastic carryout bags to customers.

Between January 1, 2023, and January 1, 2024, a store may furnish a recycled paper carryout bag or a single-use plastic carryout bag to a customer at the point of sale if the

customer pays a fee of 10 cents per bag or a higher fee adopted by the municipality or county in which the store is located.

On and after January 1, 2024, a store may furnish only a recycled paper carryout bag to a customer at the point of sale at a fee of 10 cents per bag or a higher fee imposed by the municipality or county in which the store is located. Not all stores are required to collect and remit this fee but staff estimates that approximately 50 Commerce City taxpayers will be impacted. Some larger retailers are already collecting this fee and others have decided to eliminate all carryout bags and only sell re-useable bags at their check-outs.

A store is required to remit, on a quarterly basis beginning April 1, 2024, 60% of the carryout bag fee revenues to the municipality or county within which the store is located and may retain the remaining 40% of the carryout bag fee revenues to cover the costs of administering this fee.

Based on the current wording in our Code, this fee is subject to the City's Sales and Use Tax unless an exemption is created.

For every 1,000 bags issued within the City, \$100 in state mandated bag fees are charged and collected. \$ 60 of these fees are remitted directly to the City. Commerce City sales or use tax is also due on these fees. The amount due on 1,000 bags would be \$ 4.50. The cost to the taxpayer to properly track, report and remit this tax far exceeds the tax collected and remitted. For this reason, exempting the bag fee from Commerce City's Sales and Use Tax is recommended. Other home rule municipalities have indicated they will be exempting these fees from their local tax in the future.

Staff Responsible (Department Head): Theresa Wilson, Interim Finance Director

Staff Presenting: Ken Keeley, Tax Manager

Financial Impact: N/A

Funding Source: N/A

Staff Recommendation: The adoption of the proposed ordinance and the exemption of both the bag fee and state delivery fee from the City's Sales and Use Tax.

Suggested Motion: I move to adopt Ordinance 2499 on first reading.