

Sales & Use Tax Code

City Council

April 14, 2014

General Background

- Approximately 70% of City's general fund revenue comes from sales & use tax
- Retail provides less revenue in Commerce City than in other metro area cities
- Commerce City's revenue is heavily reliant on industry & business-to-business sales
 - Many are multi-state or even multi-national
 - Many will not change their software just for us
 - So those often are audited every 3 years

Tax Policy in Code

- Council's adoption of Tax Code sets tax policy
- Tax auditors are to enforce Tax Code as written
- Tax Code Principles:
 - Every sale or use of tangible personal property (TPP) is taxable unless specifically exempted (3-58, 3-74 & 4-1)
 - Every time TPP changes possession tax is due (3-58, 3-72 & 4-1)
 - Services provided with sale of TPP are taxed (6-14)
 - Some services are taxed (next slide)
 - Each Code section must be read in context of whole

Services that are Taxed

- 20-4-2 Telecommunications Services
- 20-4-3 Gas, Electric and Heating Services
- 20-4-4 Pay, Cable and Subscription Television Services
- 20-4-5 Room and Accommodations Services
- 20-4-6 Meal Service, Cover, Door and Other Related Charges
- 20-4-13 Warranty and Maintenance Services
- Regulation 20-5-A-(1) Labor and Service must be included in total taxable purchase price...
- Regulation 20-S.I.35 Public Utilities
- Freight services as part of the “Purchase Price”

Business World Context

- Businesses get more informed on Tax Code
- Business practices & technologies change
 - Requires staff to continually adapt & learn
 - Requires interpreting Tax Code to see how it applies to new practices & technology
 - Sometimes requires clarifications to Tax Code
- New Case Law must be analyzed
 - May require a change in how our Tax Code is applied, either in favor or against City

Complaints

- Concern over “Regulations” in Tax Code
 - Regulations were adopted by Council as part of Tax Code in 1990 & have same weight in law
 - We may change the word to avoid confusion
- Statute of Limitations
 - CC has a 3-year statute of limitations – set in 1971
 - Same as other cities – everyone standardized in 1991
- Auditing
 - CC audits less than 2% of all business
 - CC audits approximately 1% of businesses based in CC
- Tax on “Services”

Tax on Services

- Staff worked on 20-4-7 regarding tax on TPP used in provision of service & met with taskforce
- Judge ruled in PSCo case that what we regarded as a Tax Code clarification resulted in a new tax with no vote, violating TABOR
- That ruling throws doubt on changes we considered for 20-4-7 of Tax Code

Tax Application

- Business must be licensed
- Taxpayers (businesses & others) must collect & remit tax:
 - Collect & remit sales tax on all retail sales
 - Calculate & remit use tax on all TPP purchased, leased, rented or used where sales tax wasn't paid
 - Must file return monthly, quarterly or annually
 - If delinquent, staff contacts taxpayer
- Duty of taxpayer to know Tax Code

Tax Education

- Tax Code is available on City website
- Staff offers tax seminar every year
- When taxpayers contact the City, staff advises them on how Tax Code applies to them
- City sends out an FYI document every January
- City issues Tax Bulletins as needed to clarify how tax is applied to specific situations
- Tax audits are to educate & collect tax due

Tax Audits

- Only small % of businesses are audited
- As mentioned above, many businesses don't change their accounting system just for us
- Others have such a large volume that errors occur in their set-up
- Companies headquartered elsewhere keep their records at their headquarters requiring auditors to travel
- If those businesses weren't audited, CC would never receive the revenue

Tax Audits (con't)

- Some audits result in refunds
- Construction projects need to be audited since what is missed will never be recovered
- Nearly 10 years ago a group of contractors were found using a state exemption certificate to avoid paying CC tax
 - Our auditors found this & put a stop to it
 - Those contractors still have some angry members agitating for change

Tax Audits (con't)

- In past 10 years CC tax auditors completed 55.2 audits & recovered \$6.2 million average per year
- Tax audits are essential to effective Tax Code compliance
 - It helps the honest taxpayers better understand the Tax Code
 - It helps keep the less-than-honest more honest
 - Result is a level playing field for competing businesses

How are Businesses Selected?

- Out-of-state businesses that don't change their accounting procedures
- Businesses with repeated high error rates
- An entire business group i.e. fast food
- Anomalies spotted in another business' audit i.e. audit of supplier shows potential problem
- Business that hasn't been audited for a number of years

Peek Inside an Audit

- Tax auditor needs to understand nature of the taxpayer's business
- Audits often review tens of thousands lines of transactions
 - So auditor focuses on items not taxed (exceptions)
 - Auditor conducts sample audit using different months from 3-year audit period, with agreement of taxpayer
 - Sometime audits are brought current & cover longer period up to a milestone (ownership change)

Customer Service

- Tax Code is law not a series of suggestions
 - Tax Division staff don't have choice of adapting or waiving parts to help some
 - All competing businesses need to be treated equitably
- Tax Division does provide one-on-one advice
- Tax auditors are taught to be polite but firm
- CC tax auditors assist with Denver's seminar for construction industry each year

Customer Service (con't)

- At end of each audit each taxpayer is sent a survey along with the tax assessment
 - Taxpayers can fill it out & send it without signature
 - Most individuals sign them
- There are 12 rating areas

Courtesy	Ability to communicate	Ability to apply tax law	Recommending improvements
Professionalism	Knowledge of tax law	Sensitivity to time constraints	Soundness of audit findings
Punctuality	Care & use of company records & equip.	Cooperation with company personnel	Explaining the audit findings

Customer Service (con't)

- City received 21 surveys in 2013 (52.5% of 40 audits)
 - 4 ratings: excellent, good, fair & poor
 - 12 areas to rate times 21 = 252 ratings
 - 202 Excellent (80.2%)
 - 48 Good (19%)
 - 1 Fair (0.4%)
 - 0 Poor
- Received 6 surveys (72) through March in 2014
 - 60 Excellent
 - 11 Good
 - 1 Fair
 - 0 Poor

Areas of Concern

- Pressure for side deals – resisted so far, but we have issued clarifications to business groups
- Economic Development incentives need to be justified – currently being done
- Tax on equipment used when providing service – not an easy area to define & propose working with committee of residents
- Code language clarification & TABOR – may need to take entire Code update to voters

Next Steps

- Staff proposes working with committee of residents to review Tax Code section 20-4-7 regarding tax on equipment used in providing a service
- All changes/clarifications to Tax Code since 1992 are vulnerable to challenge under TABOR so staff proposes to “clean up” entire Tax Code and bringing updated Code to voters

Questions/Discussion