

ORDINANCE NO. 2072

INTRODUCED BY: AMADOR, BENSON, BULLOCK, CARSON, DOUGLAS, ELLIOTT, FORD, MCELLOWNEY, TETER

AN ORDINANCE AMENDING CERTAIN PROVISIONS OF THE CITY OF COMMERCE CITY SALES AND USE TAX CODE TO BRING IT INTO COMPLIANCE WITH REQUIREMENTS OF COLORADO LAW.

WHEREAS, amendments to certain provisions of the City of Commerce City Sales and Use Tax Code (the "Tax Code") are required in order to comply with requirements of Colorado law; and

WHEREAS, the City Attorney and the staff of the City of Commerce City have recommended adoption by this City Council of the amendments to the Tax Code as set forth in this ordinance; and

WHEREAS, this City Council finds that the amendments set forth in this ordinance are necessary and should be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. Regulation 20-4-1 of the Tax Code is amended to read as follows:

Regulation 20-4-1

Except as exempted by this Code, the Commerce City Sales and Use Tax is imposed upon the sale, purchase, lease, or rental or grant of license to use (including royalty agreements) or on the use, storage, distribution or consumption of tangible personal property, as defined, not purchased at wholesale, and upon the services set forth as taxable herein.

The tax falls on every separate transaction involving the sale, lease, rental or grant of right or license to use any article of tangible personal property at retail. If the property is purchased and utilized by the purchaser for his own general business or personal use, other than for customer demonstration, display, or stock inventory purposes, there is due a tax due upon the price paid. An example of such taxable use is the use of an automotive vehicle by the owner, salesman or employees of an auto agency for his own personal use. If that same purchaser subsequently rents, leases or sells that property to another person, the tax shall also apply to that lease, rental, sale or contract use as a separate and distinct transaction.

If a purchaser buys a property to be used exclusively in the rental or leasing business and does not utilize that property for his own general business or personal use, prior to or for any period of time subsequent to the rental or lease, then the tax will fall on the rentals only and not on the initial purchase by the vendor or lessor. However, if he does use the property for his own use, for any period of time whatsoever, either prior to subsequent to any rental or lease term, a tax shall be paid on the original purchase price in addition to the tax on the separate transaction of rental or lease.

SECTION 2. Section 20-4-7 of the Tax Code is amended to read as follows:

Section 4-7 Rental or Use of Tangible Personal Property of Another:

The purchase price paid or charged or for any consideration for the furnishing of tangible personal property with or without the services of an operator of the tangible personal property, shall be taxable hereunder as a rental or use of such tangible personal property. Such tax liability shall be imposed irrespective of the fact that during all times that said tangible personal property is so furnished or used, the control of the tangible personal property remains in the person so providing the tangible personal property.

This section does not apply to the lease of automotive vehicles that are registered by the lessee.

SECTION 3. Regulation 20-4-7 of the Tax Code is amended to read as follows:

Regulation 20-4-7:

When there is a charge made or any consideration paid for the use or furnishing of tangible personal property, whether or not as a part of a total contract or agreement and whether or not furnished with an operator thereof by the lessor, vendor, owner or contractor of the property rented, leased, sold, utilized or furnished, such transaction is subject to the collection of the Commerce City sales and use tax to the full extent of the amount charged for such use of tangible personal property without any deduction therefrom on account of the cost of the property sold, leased, rented or used, cost of materials used, cost of labor or services, or any other expense whatsoever or profit except if the charges for use of tangible personal property are separately itemized on the invoice.

This section shall apply where the customer rents, leases, or uses directly or indirectly tangible personal property, the ownership of which property resides in a person other than the person ultimately paying for the benefit thereof, together with or without the services of an operator thereof to the full extent of such purchase price paid regardless that at all times title, possession and control of the tangible property remains in or with the person so providing said property or contract service and, further, regardless of whether or not the customer purchases, leases, rents or uses pursuant to contract the tangible personal property or service either individually or in conjunction with other purchases. The tax will apply whether or not the customer's intent or true object is the purchase, lease, rental or contract use by himself directly of the tangible personal property with a resultant benefit to himself or whether or not the intent or true object of the customer is the purchase, lease, rental or contract use with benefit inuring to him as the result of the use of such tangible personal property and operator thereof by the owner or vendor of such property.

Examples of such sales, rental, leases and contract uses of tangible personal property and services subject to the Commerce City Sales and Use Tax Code include, but are not limited to, the following:

- (1) All leases, sales and contract uses of vehicles, machinery and equipment together with any materials sold on any construction project; all charges made for any computer or supporting equipment use; all charges for the rental, lease, use and sale of tangible personal property with or without an operator or contracting for use of combined equipment and personal services that involves the use or furnishing of tangible personal property.

- (2) All charges in any transaction wherein tangible property is conveyed, leased, rented, used or furnished in any degree as part of the transaction to the customer and which invoices labor and service together with or without the use of other tangible personal property as an actual, ordinary or necessary inclusion to convey, lease, rent, use or furnish to or make usable to the customer are taxable to the full extent of the consideration paid for such transaction.

SECTION 4. Section 20-5-A(1) of the Tax Code is amended to read as follows:

A-(1) Non-taxable Service Sales

The amount equal to the consideration received for labor or services sold, if the consideration for such services are separately stated from the consideration received for the tangible personal property in the retail sale, or that proportionate percentage approved in advance of the transaction by the City Manager of the City on combined sales of services and tangible personal property, that is deductible as the service or labor portion of that total sale, or the total amount paid on the sale or purchase of exclusively non-taxable. In any event, after a taxpayer's expenditure for the modification, fabrication or major repair of an item of tangible personal property, treatment by the taxpayer of the item by capitalizing such item as a depreciable capital expenditure as shown by the books and records of the taxpayer pursuant to generally accepted accounting principles, shall be evidence that such item is taxable in full as a finished product without any deduction therefrom on account of the cost of acquisition of the property, cost of material used, labor or service cost or any other expense whatsoever incurred with regard to such item of personal property.

SECTION 5. The first paragraph of Regulation 20-5-B-(2) of the Tax Code is amended to read as follows:

Regulation 20-5-B-(2)

Sales of exempt commercial packaging materials defined in Section 20-3 of the Tax Code to manufacturers, producers, wholesalers, jobbers, retailers, or other licensed vendors for use as containers, labels, and shipping cases of tangible personal property sold by them are not taxable if such containers, labels, and shipping cases are to be delivered to the customer with the article sold and as part of the finished product.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 5TH DAY OF OCTOBER, 2015.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 2ND DAY OF
NOVEMBER, 2015.

CITY OF COMMERCE CITY, COLORADO

BY: _____
Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk