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CITY

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## Sales and Use Tax Code and Regulations

### Introduction

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The regulations govern the administration and application of the City of Commerce City Sales and Use Tax Code with any amendments through December 31, 1989 and are effective January 1, 1990, on and after which date all former rules and regulations, bulletins, letters, instructions or permissions, insofar as they are in conflict with these regulations, are hereby superseded and canceled as to any taxable period commencing on and after January 1, 1990.

All prior agreements, arrangements or permissions existing under former rules, regulations or bulletins must be reaffirmed under these new rules and regulations, or such agreements, arrangements or permissions will be invalid for any taxable period commencing on or after January 1, 1990.

# **Commerce City, Colorado**

## **Sales and Use Tax Code and Regulations**

### **Foreword**

As provided under Commerce City Sales and Use Tax Code Number 20, Section 20-7-2, the following Regulations relating to the substantive and procedural contents of that Code have been prepared, under the authorization granted to the City Manager of this City and are here ordered published by the City Manager for general distribution to all concerned taxpayers in the form of this Commerce City Sales and Use Tax Handbook.

Recognizing that changes evolve from legal and administrative interpretation, the City specifically designed this Handbook to be continually updated. Revisions, rulings, and new regulations are available upon request.

We would suggest that you consult, among others, the following areas of this Handbook: The Index for any reference to your business operations, the Definition Section 20-3, the Taxation Section 20-4, and the Exemption Section 20-5 (Subsections A through T). Particular note should be given to Section 20-5-A-1 and the limitations applied to Service Deductions, as well as to all Use Tax Liability sections, including Section 20-6 of this Handbook. If after reading this Handbook you wish further clarification as to the application of the tax to your particular business enterprise, please contact the Finance Department.

**The following code sections, code section regulations and specific industry regulations of the Commerce City Sales and Use Tax Code have been amended/added/deleted and/or changed since January 1, 1990 as listed below:**

| <b><u>Code Section/<br/>Regulation</u></b> | <b><u>Effective Date</u></b> | <b><u>Code Section/<br/>Regulation</u></b> | <b><u>Effective Date</u></b> |
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## SECTION I

### COMMERCE CITY SALES & USE TAX CODE (20) - “TAXATION” AND REGULATIONS

Reproduced in this portion of the Handbook are the Code sections and regulations dealing with the scope of taxation under this Commerce City taxing Code. In conjunction with this section, refer also to Section IV “**Specific Industry Regulations**”.

This “Taxation” section of the Handbook contains the following parts:

|  |           |
|--|-----------|
| Legislative Intent .....   | Section 1 |
| Imposition of Tax - Rate of Tax .....  | Section 2 |
| General Terms, Distinctions, Words and Phrases Defined.....  | Section 3 |
| Taxable Transactions, Commodities and Services .....   | Section 4 |
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| Taxpayer (Vendor and Consumer Liability - Licenses -<br>Tax Reports - Special Accounting - Form of License and Reports ..... | Section 6 |

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## COMMERCE CITY SALES AND USE TAX CODE 20

### ARTICLE I

### TAXATION

#### Section 20-1 LEGISLATIVE INTENT

##### 1-1 Regarding the Use of Personal Property and Taxable Services

(a.) It is hereby declared to be the legislative intent of the City of Commerce City that for the purpose of this Code every person who stores, uses, distributes, or consumes in the City any article of tangible personal property, or who uses, distributes, or consumes taxable services purchased, leased or rented at retail, as herein defined, is exercising a taxable privilege.

(b.) Notwithstanding that some provisions of this Code are designated with section numbers and others are designated as regulations, all provisions of this Code have equal force and effect by virtue of the fact that the City Council has adopted the entire Code as a legislative enactment including all provisions designated as sections and all provisions designated as regulations.

##### 1-2 Regarding the Sale of Personal Property and Taxable Services

It is hereby declared to be the legislative intent of the City of Commerce City that, for the purpose of this Code, every person who is engaged in business in the City, as herein defined, and who shall deliver or cause to be delivered to the purchaser in the City, any property or services taxable herein is exercising a taxable privilege and shall collect the tax imposed by this Code on the total purchase price of such article or articles of tangible personal property or taxable services that are purchased, sold, leased or rented at any time by or to every customer or buyer, in the manner hereinafter set forth.

##### **Regulation 20-1-2**

It is incumbent upon the administration where required, to interpret for purposes of the proper enforcement of this Code, each section with reference to the Code as a whole, and with particular reference to the legislative intent as originally implied and as continuously confirmed by the lawmaking body, the legislature of this City.

The City, recognizing that not every type of sale or purchase by every person, whether individual or business grouping, could readily or reasonably be discussed in detail within the limits of this Commerce City Sales and Use Tax Handbook prior to initial publication, wishes then to notify all concerned that:

Any person, as herein defined, who is in doubt as to the effect of this Commerce City Sales and Use Tax Code upon his particular business operation, or any facet of his business, may submit a statement of facts regarding that operation to the Director of Finance and he will be furnished with a written opinion of the Director as to his liability under this law, and such opinion shall be official and binding on Commerce City under the statement of facts as submitted.

The Director's opinion as to non-tax liability with regard to any business operation shall be effective only upon the completeness and truthfulness of the statement of facts as submitted and shall be subject to any tax Code change affecting such business operation, and to any change in the operation of such business enterprise that would alter the tax liability under the Code.

As such interpretation and opinion of the Director is rendered to any person, individual, business or industrial grouping and the effect of that opinion is required of general distribution, it will be distributed to all licensed vendors, consumers, contractors, etc., as an addendum to the Specific Industry Section Rules and Regulations.

"Retail sale" is any sale, rental, lease or grant of license, or taxable service, other than a wholesale sale. Except for such wholesale sales, all sales, rentals, leases and grants of licenses of tangible personal property, unless otherwise exempt, and sales, rentals and leases of the services set forth throughout the Code and Regulations as taxable, are considered retail sales and are subject to the tax imposed by this Code. A retail sale is made to the user or consumer of the property or service sold.

The sale by a wholesaler to a user or consumer and not for resale is a retail sale and subject to the City Sales Tax. Section 20-1 referring to exercise of taxable privilege, and other references throughout the Code to sales made within the City, are limitations upon the authority of Commerce City to assert the tax. Only those retail sales made in the City, including sales made by anyone outside of Commerce City for delivery to any purchaser for storage, use or consumption within the City, are included within the definition of a taxable retail sale for purposes of the City of Commerce City Code.

The tax falls upon the transaction called the sale or purchase and/or upon the use, storage, distribution or consumption of tangible personal property as defined, or of taxable service.

The transaction shall be deemed to be a purchase or sale if the acquisition of tangible personal property or a service is effected by: the transfer, either conditionally or absolutely, of title or possession, or both, of the tangible personal property; or a lease, rental or grant of license to use (including royalty payments), store, distribute or consume the tangible personal property. The sale, rental or lease of tangible property together with the services of operator is taxable to the full extent of the purchase or sale price regardless that at all times the tangible property remains in the possession and control of the vendor as set forth in this Code.

The term "sale or purchase" includes installment and credit sales and the exchange of properties as well as the sale thereof for money, and includes and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and services, as set forth herein, for a valuable consideration, and the rendering, furnishing or selling for a valuable consideration any of the substances, things, services, rental, leases, or grants of license to use, designated and defined throughout as taxable under the terms of the Commerce City Sales and Use Tax Code and regulations.

Where any consideration is given in return for tangible personal property or the specific services set out as taxable herein, including the consideration of labor, then that transfer or "sale" is taxable hereunder.

## **Section 20-2 IMPOSITION OF TAX – RATE OF TAX**

### **2-1 Imposition of the Tax**

On and after 12:00 midnight on the 31<sup>st</sup> day of March 1971, there is hereby levied and there shall be collected and paid a tax on the purchase price paid or charged for tangible personal property and taxable services when purchased or sold at retail by every person exercising the taxable privilege as defined in Section 20-1 herein, by the sale, lease, rental, purchase, use, storage, distribution or consumption of tangible personal property and taxable services including taxable and nontaxable tangible and intangible personal property not separately stated.

### **2-2 Rate of the Tax**

The amount of the tax hereby levied is four and one-half percent (4.5%) of the purchase price as herein defined of such tangible personal property and taxable services sold or purchased at retail.

#### **Regulation 20-2-2**

All sales at retail, unless otherwise exempt, are subject to the tax imposed. The vendor must collect the tax from the purchaser. Regardless that a vendor's total gross sales consist of a number of items, each of which has a retail sale price of less than the minimum taxable sale, the tax must be computed, charged, and remitted on the total sales price of all the items sold.

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## Section 20-3 GENERAL TERMS, DISTINCTIONS, WORDS AND PHRASES DEFINED

When not clearly otherwise indicated by the context, the following terms, words, and phrases as used in the Code, shall have the following meanings:

### ~~3-1~~ **“Access Services”**

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

### ~~3-21~~ **“Adjusted Gross Sales and Services”**

means gross sales and services with the addition of:

- (A) Cost of goods purchased tax free by taxpayer and taken from his stock and used or consumed by him personally or used by him in the rendering of a service;
- (B) Collection, during the current taxable period, of bad debts that had, during a previous taxable period, been deducted from adjusted gross sales and services.

### ~~3-32~~ **“Agricultural Producer”**

means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultry men, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.

### ~~3-3~~ **“Aircraft”**

means a device that is used or intended to be used for flight in the air.

### ~~3-4~~ **“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.

### ~~Regulation 20-3-3~~

~~Every factor, auctioneer, or agent acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, custom house permit, or warehouseman's receipt for delivery of any tangible personal property, or entrusted with possession of any such personal property, for the purpose of sale, shall be deemed to be the owner thereof, and upon the sale of such property shall be required to file a return and pay the tax thereon. A sale by a factor, auctioneer, or agent, when acting for a known or disclosed and properly licensed principal, shall be taxable to the principal. The same rules apply to lienholders, such as storagemen, pawnbrokers, mechanics and artisans.~~

~~In cases of retail sales by auctioneers at their established auction houses, sales yards or other places of business, the gross receipts are taxable regardless of how the property may have been acquired or by whom it may be owned. A Commerce City Sales and Use Tax License is required.~~

### **3-45 “Automotive Vehicle”**

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

### **3-56 “Business”**

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

### **3-76 “Capital Expenditure”**

as used in this ordinance means an expenditure made in the City of Commerce City for the purpose of acquiring tangible personal property or providing a permanent addition or improvement to tangible personal property in the City made with the expectation of existence for an indefinite period of time. The term furthermore includes those expenditures for acquiring tangible personal property or providing a permanent addition or improvement to tangible personal property which, when privately owned, are or would be treated as depreciable by the United States Internal Revenue Service for income tax purposes including, but not limited to, major equipment, machinery, fixtures and motor vehicles.

### **3-8 “Carrier Access Services”**

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

### **3-97 “Charitable Organization”**

means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.~~means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in~~

~~or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.~~

### **3-108 “City”**

means the municipality of Commerce City.

### **3-119 “City Council”**

means the elected legislative body of the City of Commerce City.

### **3-1240 “City Manager” or “Manager”**

means the City Manager of the City of Commerce City, or any duly authorized agent or representative acting in his stead or behalf.

### **3-1311 “Code”**

means the Sales and Use Tax Code of the City of Commerce City or any of the adopted Codes of the City of Commerce City as the context indicates.

### **3-14 “Coins”**

means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.

### **3-15 “Coin Operated Device”**

means any device operated by coins or currency or any substitute therefor.

### **3-16 “Collection Costs”**

shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

### **3-17 “Commercial Packaging Materials”**

means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

### **3-18 “Commercial Shipping Materials”**

means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

### **3-19 “Community Organization”**

means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

### **3-20 “Construction Equipment”**

means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

### **3-21 ~~12~~ “Construction Materials”**

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

### **3-22 ~~13~~ “Consumer”**

means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.  
**“Consumer”**

~~means:~~

~~—— (a) — Any individual person or~~



~~\_\_\_\_\_ (b) \_\_\_\_\_ person engaged in business in the City who uses, stores, distributes or otherwise  
\_\_\_\_\_ consumes in the City tangible personal property or taxable services purchased  
from \_\_\_\_\_ sources inside or outside the City.~~

### **3-2314 “Consumption”**

means the act or process of consuming; it includes waste, destruction, or use. Consumption is the normal use of property for the purpose for which it was intended.

### **3-24 “Contract Auditor”**

means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

### **3-25 “Contractor”**

means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, Contractor also includes subcontractor.

### **3-2615 “Department of Finance” or “Department”**

means the Department of Finance of the City of Commerce City, of which the Sales and Use Tax Division is a part.

### **3-27 “Digital Product”**

means an electronic product including, but not limited to: (1) “digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” or “drawings.” (2) “digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) “digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) “digital books” which means works that are generally recognized in the ordinary and usual sense as “books”.

### **3-2816 “Director of Finance” or “Director”**

means the Director of Finance, City of Commerce City or any duly authorized agent or representative acting in his stead or on his behalf.

### **3-2917 “Distinction Between Sales and Use Tax”**

The primary distinction between the Sales Tax and Use Tax is that the Sales Tax is collected by a retailer from purchasers or consumers who engage in a taxable transaction and such person pays a sales tax to the retailer. In the absence of payment of the sales tax for a taxable transaction, the use tax is levied directly upon the person who (1) purchases and takes possession of the commodities or taxable services at retail in this City, or (2) purchases the commodities or taxable services outside of this City and uses them in this City, or (3) manufactures, installs, fabricates or assembles or contracts for the manufacturing, installation, fabrication or assembling of tangible personal property either in or outside this City and uses such tangible personal property in the City. The use tax is imposed on the fair market value of all the materials, labor and services used and employed in the manufacture, fabrication, installation or assembly of said property after credit is given for any sales tax that has been lawfully paid on such manufactured, fabricated, installed or assembled tangible personal property.

Provided, that in accordance with the Sales and Use Tax Code any person engaged in business in the City of Commerce City and making sales, even though not maintaining an office in this City, of property or services subject to the Sales Tax, must collect and remit the Tax on such sales in like manner as Commerce City persons collect and remit the Sales Tax.

The Sales and Use Tax generally are complements to each other in the City Revenue Plan, and together provide a uniform tax upon either the sale, purchase, use, storage, distribution or consumption of all tangible personal property and taxable services purchased, leased or rented at retail or used, as herein defined.

### **3-3018 “Distribution”**

means the act of distributing any article of tangible personal property purchased at retail for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.

#### **Regulation 20-3-18**

~~When business is solicited within the City of Commerce City by catalogues or by other advertising media, the resulting sales made to Commerce City residents are taxable no matter where the order is approved. When such catalogues or brochures are sold, the sales transaction is taxable. If such catalogues are given away, the cost of the catalogues must be reported and use tax paid to the City based on this cost.~~

~~Catalogues, brochures, etc., that are mailed from the City of Commerce City to customers outside the City are subject to the Commerce City Sales and Use Tax for their use and storage in the City of Commerce City based on the cost of such brochures, catalogues, etc. In the event the owner of such materials does not have a place of business within the City and does not assume responsibility to pay such Use Tax due on such materials which are mailed to the recipient from this City, then the person so mailing such materials from this City, whether acting as a mailing service, printing service, etc., will be held liable for such tax remittance.~~

~~Stamp companies are required to pay the Sales or Use Tax upon the cost of all trading stamps, stamp books, etc., which are stored, used and distributed or otherwise consumed in Commerce City, which are not held for taxable resale.~~

~~The sale of trading stamps to vendors who later give the stamps to customers as a premium for their trade, and which stamps may later be “traded in” for articles of tangible personal property, is taxable to the~~

~~vendor so purchasing such stamps. Upon redemption or "trading-in", the Sales Tax shall be collected on the fair market value of the item for which the stamps are redeemed or traded.~~

~~When advertising gifts, shoppers' guides, catalogues, directories, or other property, including discount or coupon redemption books, are given away as prizes, premiums or for goodwill purposes there is no charge to the recipient, such items are taxable at the cost price to the distributor. When there is a charge made to the recipient upon the distribution of such items, the tax shall be paid by such recipient to the distributor for remittance to the City as a retailer of tangible personal property.~~

~~The sale of gift certificates is not subject to tax. However, when the certificate is exchanged, in whole or in part, for tangible personal property, that transaction is a sale and taxable as such at the full fair market value of the article received.~~

### **3-19 "Drugs Dispensed in Accordance with a Prescription"**

~~means drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions if any, to be placed on the label.~~

### **3-3120 "Dual Residency"**

~~means, for the purpose of this Code,~~ those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.

### **3-2132 "Engaged in Business in the City"**

~~means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier.~~ means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. Engaged in

business in the City includes, but is not limited to, any one of the following activities by a person;

- ~~\_\_\_\_\_ (a) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction.~~
- ~~\_\_\_\_\_ (b) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;~~
- ~~\_\_\_\_\_ (c) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;~~
- ~~\_\_\_\_\_ (d) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or~~
- ~~\_\_\_\_\_ (e) Makes more than one delivery into the taxing jurisdiction within a twelve month period.~~

#### **Regulation 20-3-21**

~~The vendors who deliver tangible personal property, or cause to be delivered such property purchased from them at retail to a Commerce City resident are subject to the provisions of the Commerce City Sales and Use Tax Code. Any vendor who delivers or causes such deliveries to be made without first complying with the Commerce City Sales and Use Tax Code or any other person aiding or abetting the noncomplying vendor, including, but not limited to, common or contract or commercial carriers so delivering such tangible personal property for the vendor, shall be deemed by the Director as guilty of a violation of this Code and shall be prosecuted accordingly. (Refer to Specific Industry Section "Common, Contract and Commercial Carrier".)~~

~~Purchasers of tangible personal property, the storage, use or consumption of which is subject to the City Sales and Use Tax, must pay the tax either to the vendor, if he is licensed and authorized to collect the tax, or directly to the City of Commerce City.~~

~~===== The law provides the following methods for the payment of Use Tax:~~

- ~~===== (1) If the vendor maintains a place of business or office in the City or State, such vendor shall be responsible for the collection and remittance of the Use Tax on all sales made by such a vendor for use, storage, distribution or consumption in Commerce City regardless of whether or not the purchaser buys through offices in the city or state, or orders by mail or otherwise direct from the retailer in another city or state.~~
- ~~===== (2) If the vendor does not have an office or place of business in the city or state, but does have salesmen or other representatives soliciting orders and making sales in Colorado and Commerce City, then such a vendor may be responsible for the entire tax on all sales made for use, storage, distribution or consumption in Commerce City and if such vendor does not assume such responsibility, then such salesmen or agents must collect and remit the Commerce City Tax.~~
- ~~===== (3) If the Sales and Use Tax is not collected by the vendor, or his salesmen, the purchaser must pay the tax to the Director of Finance directly. All vendors or salesmen responsible for collecting the Sales and Use Tax shall apply for and obtain from the City of Commerce City a Sales and Use Tax License, and~~

~~in the event there is a failure to so apply for a Commerce City Sale and Use Tax License on the part of the salesman or vendor, then he shall be subject to the penalties as set forth herein.~~

~~(4) At the Director of Finance's discretion a cash deposit may be required of any transient salesman or vendor subject to refund of such cash deposit upon complete compliance with the licensing and reporting provisions of this Code. The refund time limitations and other provisions set out in Section 10 of this code shall apply in cases of such cash deposit. The Director shall require a deposit in any amount sufficient to pay any tax liability of the transient salesman or vendor arising under this Code based on the best information available to the Director. (See also deposit requirements in the Commerce City Municipal Code Section 9-193)~~

### **3-2233 "Excess Tax"**

means that amount of tax collected during a reporting period that is in excess of four and one-half percent (4.5%) of City net taxable sales and services, and which excessive collection must be remitted to the City using the method prescribed herein.

### **3-23 "Exempt Commercial Packaging Materials"**

~~means containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all 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 reuse.~~

### **3-2434 "Exempt Institution"**

means an institution, company, organization or entity that complies with the qualifications required by the Internal Revenue Service for exemption pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code or, in the opinion of the Director of Finance of the City of Commerce City, an institution, company, organization or entity that, except for the form of organization, would substantially meet the requirements of the provisions of Section 501(c) (3) of the Internal Revenue Code.

### **3-2535 "Exemptions"**

means those deductions from adjusted gross sales and services in order to arrive at a taxable base, which exemptions may include exempt transactions (in whole or in part), sale or purchase of exempt commodities, articles or services, or sale to exempt "persons" who may either be exempt on their direct purchase or exempt on the type of commodity, articles or services purchased, all as set forth in Section 20-5 herein.

### **Regulation 20-3-25**

See all authorized exemptions under the City Sales and Use Tax Code, in the same format (deductions A through T) as on your Commerce City Sales and Use Tax return, in Section 20-5 of the Code.

### **3-36 “Factory Built Housing”**

means a manufactured home or modular home.

### **3-~~26~~37 “Farm Close-Out Sale”**

means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

### **3-~~27~~38 “Finance Director”**

means the Finance Director of Commerce City or such other person designated by the municipality; “Finance Director” shall also include such person’s designee.

### **3-~~28~~39 “Food”**

means food for human home consumption as defined in 7 U.S.C. section 2012 (~~gk~~) (2014) as amended, for purposes of the federal food stamp program as defined in 7 U.S.C section 2012 (~~ht~~), as amended, except that “food” does not include carbonated water marketed in containers; isotonic products; drinks marketed primarily to boost energy; chewing gum; seeds and plants to grow food; prepared salads and salad bars; cold sandwiches, deli trays, and food or drink vended by or through machines or non-coin operated coin collecting food and snack devices on behalf of a vendor.

### **Regulation 20-3-28**

~~For purposes of this regulation, food includes food and drink.~~

~~Any food, as specified in 7 U.S.C. section 2012(g), as such section exists on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the federal food stamp program is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.~~

~~Any food, as specified in 42 U.S.C. section 1786, as such section exists on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants, and children is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.~~

### **3-40 “Garage Sales”**

means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

### **3-~~4129~~ “Gross Sales”**

means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

### **3-42 “Lease”**

means a written contract whereby one party retains title to property and grants use or occupation of the property to another for a period of time in exchange for a specified consideration. The fact that the contract provides for a transfer of title at a time after payments are made or the transaction allows payor to capitalize the property under generally accepted accounting principles does not alter the transaction as a lease within the meaning of the Code so long as title to the property remains with the payee.

### **3-~~3143~~ “License”**

means a Commerce City sales and/or use tax license.

### **3-~~3244~~ “Linen Services”**

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

### **3-~~3345~~ “Lodging Services”**

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

### **3-46 “Manufacturing”**

means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

### **3-~~3447~~ “Medical Supplies”**

means ~~drugs dispensed in accordance with a prescription~~ drugs for humans; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and



hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses, or hearing aids.

### **3-~~35~~48 “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 over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

### **3-~~36~~49 “Net Taxable Sales and Services”**

means adjusted gross sales and services less authorized “exemptions” therefrom.

### **3-~~37~~50 “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, or books or pocket editions of books.

### **3-~~38~~51 “Notice”**

All notices required to be given under the provisions of this Code shall be in writing and given personally or by mail in which event notice shall be sufficient for the purpose of this Code unless context indicates otherwise, if mailed postpaid by certified or registered mail to the addressee’s last known address as shown on the City’s tax records or the property tax records of any county wherein the taxpayer owns property taxable under the general property tax laws of the State of Colorado.

### **3-52 “Online Garage Sales”**

means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller’s household.

### **3-~~39~~53 “Pay Television”**

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



### **3-4054 “Person”**

means any individual, firm, partnership, joint venture, corporation, [limited liability company](#), estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

### **3-4155 “Personal Property”**

means all property except real property.

### **3-4256 “Pre-Printed Newspaper Supplements”**

shall mean inserts, attachments or supplements circulated in newspapers that:

- (a) are primarily devoted to advertising; and
- (b) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

### **3-4357 “Prescription Drugs for Animals”**

[means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.](#)  
~~means drugs dispensed in accordance with any order in writing, dated and signed by a practitioner, or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.~~

### **3-58 “Prescription Drugs for Humans”**

[means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any written or electronic order 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 any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.](#)

### **3-4459 “Price” or “Purchase Price”**

[means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal](#)

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

- (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 the 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 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. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.
- (e) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated labor charges to accomplish delivery.
- (f) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (g) Indirect federal manufacturers' 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 service performed and the profit thereon.

**“Price” or “Purchase Price” shall not include:**

- (a) Any sales or use tax imposed by the State of Colorado 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 Colorado. 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, and the seller is not reimbursed for the discount by the manufacturer or someone else. 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.

**3-~~4560~~ “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.

**3-~~4661~~ “Prosthetic Devices for Humans”**

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 patient; individual; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include but are not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

**3-~~4762~~ “Purchase” or “Sale”**

means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:  
~~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, other taxable products, or taxable services; 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, other taxable products, 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 tangible personal property, other taxable products, or services.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 interest in the partnership;
- ~~(b) The formation of a corporation or limited liability company by the owners of a business and the transfer of their business assets to the entity in exchange for all the entity's outstanding stock or ownership units, in proportion to the assets contributed;~~
- ~~(eb) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; The transfer of assets of shareholders or members in the formation or dissolution of a corporation or a limited liability company, as applicable;~~
- ~~(dc) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; stockholders or of the limited liability company's assets to its members;~~
- ~~(ed) A transfer of a partnership or limited liability company interest;~~
- ~~(fe) The transfer in a reorganization qualifying under section 368 (a) (1) of the “Internal Revenue Code of 1954” as amended; The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;~~
- ~~(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;~~

- (~~hf~~) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (~~ig~~) The transfer of assets from a parent ~~corporation~~ company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;~~corporation or corporations or from a limited liability company to a subsidiary limited liability company or companies which are owned at least eighty percent by the parent entity, which transfer is solely in exchange for stock or ownership units of the subsidiary entity;~~
- (~~jh~~) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;~~entity or entities which are owned at least eighty percent by the parent entity to a parent entity or to another subsidiary which is owned at least eighty percent by the parent entity, which transfer is solely in exchange for stock or units of the parent entity or the subsidiary which received the assets;~~
- (~~ki~~) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies 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 company 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 company. To such an extent any transfer referred to in this paragraph (i) shall constitute a sale. For the purposes of this paragraph (i) , a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock;~~entities, or between subsidiary entities closely held by the same parent entity, or between entities which are owned by the same shareholders or members in identical percentage of ownership amount, computed on a share-by-share basis or unit-by-unit basis, as applicable, when a tax imposed by this article was paid by the transferor entity 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 entity. Any transfer referred to in this paragraph (k) shall constitute a sale. For the purposes of this paragraph (k), a closely held subsidiary entity is one in which the parent entity owns stock or ownership units, as the case may be, possessing at least eighty percent of the total combined voting power of all classes of stock or ownership units entitled to vote and~~

~~owns at least eighty percent of total number of shares or ownership units of all other classes of stock or ownership units, as the case may be.~~

### **3-4863 “Purchaser” or “Consumer”**

means any person to whom taxable service has been rendered or who shall have leased, rented, or purchased at retail, taxable services or tangible personal property which is purchased, delivered, used, stored, distributed or consumed in the City upon which a tax is imposed hereby.

### **3-4964 “Quasi-governmental Organization**

means an organization that is a legal entity that is a unit of government rather than a private corporation that has the power of eminent domain as described in the Colorado Statutes or has the power to impose taxes on the general public.

### **3-50-65 “Real Property”**

means property that is land and includes property of a permanent and immovable nature\_ affixed to land or property affixed to land in a manner that removal from the land or property affixed to the land would cause substantial damage to the land or property being removed and/or would require extensive work, preparations or modifications to the property being removed.

#### **The following shall constitute conclusive evidence of proof of real property:**

- (a) Assessment as real property on the general property tax rolls for payment of property taxes.
- (b) Depreciation as real property on the federal income tax returns of the taxpayer.

#### **Examples of real property are:**

- (a) Land.
- (b) Crops growing upon land.
- (c) Structures such as houses and office buildings affixed to land on a permanent foundation.
- (d) Attachments to real property that, if removed, would require extensive work, preparations or modifications to the attachments and/or would result in substantial damage to the attachment being removed or to the real property to which the attachment is affixed.

#### **Examples of property that is not real property:**

- (a) Towers or beams that are attached to real property by bolts that can be removed without substantial damage to the land or to the property being removed.
- (b) Tanks, vats, sheds, pipes and conveyor systems that are removable from real property without causing substantial damage to the property being removed or to the real property from which it is being removed.

### **3-5166 “Recreation Services”**

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

### **3-67 “Renewable Energy”**

means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy).  
Renewable Energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

### **3-5268 “Rental”**

as opposed to a lease of personal property within the meaning of this Code, means any contract, oral or written, whereby one owning such personal property grants to another the right to possess, use and enjoy such personal property not over an extended period of time for a specified purpose and generally for a specified period of time of relatively short duration in exchange for a specified payment. A transaction that is designated in writing as a lease shall be presumed to be a lease and not a rental. Any transaction that is not clearly a lease within the definition of this Code shall be construed as a rental.

### **3-5369 “Resident”**

means, for the purposes of the taxation provisions herein, a person who resides or maintains his domicile within the City of Commerce City or who maintains one or more places of business within the City at the time of a taxable transaction as defined herein.

A person may have dual residency, or other places of residence or domicile, or place of business outside the City prior to, during or after the occurrence of the taxable transaction and be a “resident” according to the terms of this definition.

### **3-5470 “Retail Sales”**

means all sales except wholesale sales.

### **Regulation 20-3-54**

~~“Retail sale” is any sale, rental, lease or grant of license, or taxable service, other than a wholesale sale. Except for such wholesale sales, all sales, rentals, leases and grants of licenses of tangible personal property, unless otherwise exempt, and sales, rentals and leases of the services set forth throughout the Code and Regulations as taxable, are considered retail sales and are subject to the tax imposed by this Code. A retail sale is made to the user or consumer of the property or service sold.~~

~~The sale by a wholesaler to a user or consumer and not for resale is a retail sale and subject to the City Sales Tax. Section 20-1 referring to exercise of taxable privilege, and other references throughout the Code to sales made within the City, are limitations upon the authority of Commerce City to assert the tax. Only those retail sales made in the City, including sales made by anyone outside of Commerce City for delivery to any purchaser for storage, use or consumption within the City, are included within the definition of a taxable retail sale for purposes of the City of Commerce City Code.~~

### **3-~~55~~71 “Retailer”**

means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any:~~means any person selling, leasing or renting tangible personal property or services at retail. Retailer shall include any:~~

- (a) Auctioneer;
- (b) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- (c) Charitable organizations or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift of donation or that the proceeds are to be used for charitable or governmental purposes.

(d) Retailer-Contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.

#### **Regulation 20-3-55**

- (e) A ~~retailer or a~~ vendor ~~is a~~ person who engages in the business of making retail sales as herein defined, and who is charged with the collection, accounting for, and remittance of the sales tax imposed by this Code.

### **3-72 “Retailer-Contractor”**

means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

### **3-~~56~~73 “Return”**



means any form prescribed by the city/town administration for computing and reporting a total tax liability.~~means the sales and use tax reporting form used to report sales and use tax.~~

### **3-~~5774~~ “Sales Tax”**

means the tax to be collected or required to be collected and remitted by a retailer on sales taxed under this Code.

### **3-~~5875~~ Sales Tax Defined**

The Commerce City Sales Tax is levied on all sales, leases and rentals at retail on the basis of the purchase or sale price on purchases of tangible personal property and specific services taxable hereunder.

All sales and purchases of tangible personal property are subject to the tax, except as specifically exempted. Sales and purchases of services as specifically set forth in Section 20-4 are subject to the tax. The tax is in reality imposed on the purchaser. The duty is imposed on the seller to collect and remit the tax to the City under the penalties for failure to do so as prescribed herein.

Failure of the Seller to collect and remit the sales tax herein required shall subject the Seller to liability for the unpaid sales tax, interest and penalty. In addition, the purchaser shall be liable for payment of the unpaid sales tax, interest and penalty to the City as a use tax payable by the purchaser to the City on the sale transaction that was completed in the City regardless of where the ultimate use of the tangible personal property occurs.

Collection of the tax, interest and penalty may be pursued by the City against either or both the seller and the purchaser. However, collection by the City of the total tax, interest and penalty shall be limited to the amount of the assessment including interest and penalty.

#### **Regulation 20-3-58**

~~The tax falls upon the transaction called the sale or purchase and/or upon the use, storage, distribution or consumption of tangible personal property as defined, or of taxable service.~~

~~The transaction shall be deemed to be a purchase or sale if the acquisition of tangible personal property or a service is effected by: the transfer, either conditionally or absolutely, of title or possession, or both, of the tangible personal property; or a lease, rental or grant of license to use (including royalty payments), store, distribute or consume the tangible personal property. The sale, rental or lease of tangible property together with the services of operator is taxable to the full extent of the purchase or sale price regardless that at all times the tangible property remains in the possession and control of the vendor as set forth in this Code.~~

~~The term “sale or purchase” includes installment and credit sales and the exchange of properties as well as the sale thereof for money, and includes and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and services, as set forth herein, for a valuable consideration, and the rendering, furnishing or selling for a valuable consideration any of the substances, things, services, rental, leases, or grants of license to use, designated and defined throughout as taxable under the terms of the Commerce City Sales and Use Tax Code and regulations.~~

~~Where any consideration is given in return for tangible personal property or the specific services set out as taxable herein, including the consideration of labor, then that transfer or "sale" is taxable hereunder.~~

### **3-5976 "Security System Services"**

~~means electronic alarm and/or monitoring services.~~  
means electronic security system services.  
Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.

### **3-77 "Software as a Service"**

~~means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including but not limited to applications, systems or programs.~~

### **3-78 "Software License Fee"**

~~means a fee charged for the right to use, access, or maintain software programs.~~

### **3-79 "Software Maintenance Agreement"**

~~means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support.~~

### **3-6080 "Sound System Services"**

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

### **3-6181 "Special Accounting Basis" or "Estimated Percentage Basis"**

means the permission to pay the City Sales or Use Tax liability on a percentage of gross sales, gross purchases or gross construction valuation and which is granted to facilitate tax reporting to qualified consumers or vendors upon petition to the City Manager or his agent on basis prescribed in Section 20-6 and elsewhere herein.

### **Regulation 20-3-61**

~~If any vendor can establish that the amount of taxable sales made to Commerce City residents are infrequent and relatively small in proportion to his total volume of business and, therefore, create an undue bookkeeping burden, and if the vendor is willing to submit regular audit reports as to the frequency of sales to Commerce City residents in comparison to all of his sales and pay tax accordingly on this estimated basis, the Director shall be authorized, in his discretion, to accept such payment basis. The Director of Finance is authorized, at his discretion and upon the submission of sufficiently audited reports, to accept such or similar arrangement for payment of the Commerce City Sales and Use Tax that may be due from~~

~~any person where there is demonstrated that it is economically infeasible to report the tax due on an "actual" item by item basis.~~

### **3-6282 "Storage"**

means any keeping or retention of, or exercise ~~of~~ dominion or control over, or possession of, for any length of time, ~~of~~ tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.

### **3-83 "Student"**

means any person enrolled in a school.

### **3-6384 "Tangible Personal Property"**

means ~~corporeal personal property;~~ personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

#### **Regulation 20-3-63**

~~Tangible personal property, for purposes of this Code, means all goods, merchandise, products, commodities or corporeal things and substances, solid, liquid or gaseous, which are dealt in and capable of being possessed, measured, weighted, contained, transported or exchanged, and the services or labor ordinary or necessary or actually utilized to sell, rent, lease or convey that property to the customer in a usable form or manner and which are specified as taxable herein.~~

~~Not included in the definition of "tangible personal property" are: real estate or any interest therein; book accounts, stocks, bonds; mortgages; notes and other evidences of debt; insurance certificates or policies; business, professional, hunting, fishing or other licenses; or uncanceled United States postage or revenue stamps sold for postage or revenue purposes.~~

~~Prefabricated units and other property purchased for improvements to real estate, houses when detached from the land, and trailers or mobile homes not affixed to the land are all tangible personal property.~~

~~Property severed from real estate, or property capable of being severed from real estate without irreparable damage to the structure proper or to the property so severed is tangible personal property. This would include such items as furniture and fixtures, which would be taxable on their sale, lease or rental, for example in a real estate transfer or change in ownership. The term "fixtures" as used herein means things which are accessory to a building and which do not lose their identity as accessories when placed or installed.~~

~~Where referred to throughout this Code, tangible personal property shall also include and mean the specific services as set out as taxable herein. "Services" which include the making of tangible personal property available in any degree, together with labor, whether sold, leased or rented, are taxable under this Code on the basis, and to the degree as set forth throughout the Code and regulation sections herein, with no deduction from the gross sales price of such "services" to arrive at a taxable base, without the express approval of the Director.~~

~~That property and specific services which are referenced throughout this Code and regulations as tangible in nature, and/or taxable on its sale, lease, rental use, storage, distribution or consumption shall be~~

~~considered as defined by the City as tangible personal property for the purposes of its City Sales and Use Tax Code and regulations and shall be thus referred to throughout.~~

### **3-6485 “Tax”**

means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

### **3-6586 “Tax Deficiency” or “Deficiency”**

means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.~~means any amount of tax that is not reported or not paid on or before the due date.~~

### **3-6687 “Taxable Sales”**

means gross sales less any exemptions and deductions specified in this Code.

### **3-6788 “Taxable Services”**

means services subject to tax pursuant to this Code.

### **3-6889 “Taxpayer”**

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

### **3-6990 “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 telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. “Telecommunications service” does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted.

### **3-7091 “Therapeutic Device”**

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

### **3-7192 “Total Tax Liability”**

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

### **3-7293 “Use”**

means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or vendor or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

#### **Regulation 20-3-72**

~~The use to which property is put, in order to bring about imposition of the tax, is not necessarily an ultimate usage, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the tax when the article purchased is actually possessed or used or made available for use after delivery is completed. This shall include the keeping, storage, withdrawing from storage, moving, installing, or performing other acts by which dominion of, or control over the property is assumed by the purchaser, except if held for resale as set out herein.~~

~~The storage, possession, use or consumption of an article of tangible personal property in the performance of a service or contract is sufficient to incur liability for the Use Tax.~~

~~Where tangible personal property is traded in an exchange between unlicensed individuals, the Use Tax is imposed on the fair market value of each article. Each owes the tax on the fair market value of the tangible personal property he receives in exchange. Any transaction or series of transactions which result in the transfer of title or possession, or both, of tangible personal property shall constitute a taxable exchange, as set out herein.~~

~~When no Commerce City sales tax has been paid on the acquisition of tangible personal property taxable under the Code for use, storage, distribution or consumption, the tax, shall be paid unless the transaction is otherwise exempt pursuant to the provisions of this Code, based upon the purchase price at the time of acquisition, except as otherwise provided in Regulation 20-4-10. However, no use tax shall be imposed for the original purchase transaction with respect to the use or consumption of tangible personal property within the City which occurs more than three (3) years after the most recent acquisition of such tangible personal property if within the three (3) years following such original acquisition, the tangible personal property has been significantly used outside the City for the principal purpose for which it was purchased. If the original acquisition of the tangible personal property is within three (3) years of the use or consumption thereof in Commerce City, any subsequent rental or use for the benefit of another in Commerce City shall also be taxable pursuant to Section 20-4-7 and Regulation 20-4-7 as a separate transaction.~~

~~The imposition of the Commerce City Use Tax falls on any property purchased for use, storage, distribution and consumption in this City whether that property was purchased in or out of state or outside the City, and that is not otherwise exempt under this Code.~~

### **3-7394 “Use Tax”**

means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City or by a

purchaser for purchasing and taking possession of tangible personal property in the City without payment of the City sales tax, regardless of where the tangible personal property is used.

### **3-7495 “Use Tax Defined”**

The Commerce City Use Tax is levied (1) upon the privilege of using, storing, possessing, distributing or otherwise consuming tangible personal property and taxable services in the City of Commerce City which property or services is purchased, leased, rented or possessed at retail for which no legally imposed municipal sales tax at least equal to the Commerce City Sales Tax has been paid and without regard to whether the property or service is purchased either from sources within or without the City or (2) upon a purchase of tangible personal property in the City upon which no City sales tax has been paid. Non-resident persons engaged in business in Commerce City, as defined, are required to collect and remit the Tax on taxable transactions.

### **3-9675 “Vendor’s Fee” or “Retainage”**

means the percent of total City Sales and Use Tax collected which is authorized to be retained by the licensed vendor to recompense him for his expense of collecting and remitting the City Sales Tax on his sales to the various purchasers or consumers. Consumers filing a City Use Tax Report are not entitled to the Vendor’s Fee.

### **3-7697 “Watts/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.

### **3-7798 “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 non-licensed retailers are not wholesale sales.

#### **Regulation 20-3-77**

~~All sales are either wholesale or retail. It is illegal for any person to sell at retail in Commerce City without first having obtained a Sales Tax License. It shall be presumed that any person not having a valid State of Colorado or Commerce City Sales and Use Tax License is the ultimate user or consumer of any property that he purchases. Any sales to such a person will be taxable as a retail sale regardless of the disposition of the property sold.~~

### **3-7899 “Wholesaler”**

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

#### **Regulation 20-3-78**

~~Wholesale dealers should have record of the Sales and Use Tax License numbers of every purchaser to whom he sells at wholesale. (He may keep these numbers of his ledger, in a separate card index, in a suitable book or on each individual invoice.)~~

~~It is required that each invoice have the complete name and address of the purchaser on all wholesale invoices. Invoices which do not show a name but are made out to cash must always be considered to be retail sale invoices and taxable. If the purchaser has a Sales and Use Tax License, the dealer may sell to him tax exempt, provided the purchaser is substantially engaged in the business of reselling the property he is buying. Even though a purchaser does have a Sales and Use Tax License, the dealer is not relieved of the responsibility of collecting tax on the items which a purchaser personally uses. It is the dealer's responsibility to know the nature of his customer's business so that he will know when to collect tax on items purchased for personal use.~~

## **Section 20-4 TAXABLE TRANSACTIONS, COMMODITIES AND SERVICES**

It shall be a violation of this Code for any seller to fail to collect or any purchaser to fail to pay a tax levied by this Code, and on sales on which exemption is disputed.

Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless, the seller shall collect and the purchaser shall pay such tax; the purchaser thereafter may apply to the Director of Finance for a refund of such taxes paid as provided herein.

There is hereby levied and there shall be collected and paid, a tax as stated in Section 20-2, by every person exercising the taxable privilege defined in Section 20-1 hereof as follows:

### **Regulation 20-4**

(Refer to "Specific Industry Regulations" and index for reference to specific business operations and their taxability under the Code.)

#### **4-1 Tangible Personal Property**

Except as exempted by this Code, on the value received, paid or charged upon (1) the sale, purchase, lease, rental, use or grant of license to use, or on the use, storage, distribution or consumption of tangible personal property not purchased at wholesale; (2) upon services included as taxable herein; and (3) on the subsequent sale, purchase, lease, rental, use or grant of license to use tangible personal property by any person to every consumer or purchaser regardless that the person so purchasing and subsequently selling, purchasing, leasing, renting or using that personal property paid the tax imposed herein on his initial purchase or use of the said property so acquired.

A manufacturer, fabricator, installer or assembler of tangible personal property, including the owner of tangible personal property who contracts with another for the furnishing of labor, materials, services or equipment or provides labor, materials, services or equipment, internally or in-house for the manufacture, fabrication or assembly of the tangible personal property is taxed under this section upon the use or consumption of tangible personal property including the installation into or the affixing to real property. The tax due hereunder, in such case where the tangible personal property is not sold to a purchaser but is capitalized, shall be levied upon the capitalized value of the tangible personal property as a finished product as shown by the books and records of the owner or lessor including internal and outside labor, materials, services and equipment employed in the manufacture, fabrication, installation or assembly of said property, the cost of which is treated as a capital expenditure by the owner or lessor. The tax due hereunder shall not be computed upon any profit that would have been derived from the ordinary retail sale of said property. If the tangible personal property is not sold to a purchaser but is used by a manufacturer, fabricator, installer or assembler as a contractor in the performance of a contract as part of the contractor's business operation, the tax shall be levied upon the cost of materials used in the performance of the contract.



Labor, as used in this section, means labor acquired or supplied either by outside sources or by the user or consumer of the tangible personal property used in the manufacture, fabrication, installation or assembly process.

The manufacture, fabrication, installation or assembly of tangible personal property taxable hereunder includes all of the expenditures that are treated by the owner or lessor as capital expenditures that result in one capitalized value of tangible personal property for the entire project.

The sales or use tax is levied upon the full purchase price of tangible personal property sold or used after its manufacture, fabrication, installation or assembly or after having been made to order and includes the full purchase price of materials used from whatever source and the cost of all outside labor and services used in the manufacture, fabrication, installation and assembly of the tangible personal property excluding however, such tangible personal property as is otherwise exempted in this Code. The purchase price is the gross value of all the materials, outside labor and the profit thereon including the price charged to the user or consumer. However, if no sale is made of the tangible personal property, profit that would have been derived from the retail sale thereof shall be excluded from the taxable value.

Therefore, if a finished project includes tangible personal property that is used by the owner or lessor and the project is capitalized as tangible personal property by such owner or lessor, the total of the capital expenditures shall be the basis for determining the Commerce City sales or use tax on the sale, purchase, lease, rental or grant of license to use or on the use, storage, distribution, or consumption of the capitalized tangible personal property. Accordingly, the use tax shall be payable on the entire capitalized value of the finished project.

Where the lease, rental or purchase documents show Commerce City as the location of the lessor or as the place of delivery to a purchaser of tangible personal property, it shall be considered that the situs of the transaction is within the City of Commerce City and a sales or use tax shall be payable to Commerce City for the lease or purchase of tangible personal property even though ultimate utilization of such tangible personal property is outside the City unless, in the case of a lease, the lease document otherwise shows the location of the leased tangible personal property outside the City of Commerce City.

In the case of a rental of tangible personal property, if possession is taken in Commerce City the taxation of the rental transaction shall be deemed to continue in Commerce City.

#### **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 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 or 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.

Tangible personal property, for purposes of this Code, means all goods, merchandise, products, commodities or corporeal things and substances, solid, liquid or gaseous, which are dealt in and capable of being possessed, measured, weighted, contained, transported or exchanged, and the services or labor ordinary or necessary or actually utilized to sell, rent, lease or convey that property to the customer in a usable form or manner and which are specified as taxable herein.

Not included in the definition of "tangible personal property" are: real estate or any interest therein; book accounts, stocks, bonds; mortgages; notes and other evidences of debt; insurance certificates or policies; business, professional, hunting, fishing or other licenses; or un-canceled United States postage or revenue stamps sold for postage or revenue purposes.

Prefabricated units and other property purchased for improvements to real estate, houses when detached from the land, and trailers or mobile homes not affixed to the land are all tangible personal property.

Property severed from real estate, or property capable of being severed from real estate without irreparable damage to the structure proper or to the property so severed is tangible personal property. This would include such items as furniture and fixtures, which would be taxable on their sale, lease or rental, for example in a real estate transfer or change in ownership. The term "fixtures" as used herein means things which are accessory to a building and which do not lose their identity as accessories when placed or installed.

Where referred to throughout this Code, tangible personal property shall also include and mean the specific services as set out as taxable herein. "Services" which include the making of tangible personal property available in any degree, together with labor, whether sold, leased or rented, are taxable under this Code on the basis, and to the degree as set forth throughout the Code and regulation sections herein, with no deduction from the gross sales price of such "services" to arrive at a taxable base, without the express approval of the Director.

That property and specific services which are referenced throughout this Code and regulations as tangible in nature, and/or taxable on its sale, lease, rental use, storage, distribution or consumption shall be considered as defined by the City as tangible personal property for the purposes of its City Sales and Use Tax Code and regulations and shall be thus referred to throughout.

## **4-2 Telecommunication Services**

- (A) Except as herein otherwise provided for taxation of mobile telecommunications, upon telecommunication services, whether furnished by public or private corporations, or enterprises for all international, interstate and intrastate telecommunication services originating from or received on telecommunication equipment in this City if the charge for the services is billed to the location of an apparatus, telephone, or account in this city, or to a customer location in this city, or to a person residing in this city without regard to where the bill for such service is actually received.

(B) On or after August 1, 2002, mobile telecommunications service shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use, as hereinafter defined, is within the City of Commerce City. In accordance with the federally-imposed Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116-126, as amended, mobile telecommunications service provided to a customer whose place of primary use, as hereinafter defined, is outside the borders of the City of Commerce City is exempt from the tax imposed by this section

(1) If a customer believes that a tax, charge or fee assessed by the City in the customer's bill for a mobile telecommunications service is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, the customer shall notify the home service provider, as hereafter defined, in writing within two years after the date the bill was issued. The notification from the customer shall include the street address of the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error and any other information that the home service provider may require.

(2) No later than 60 days after receipt of notice from a customer pursuant to subparagraph B of this section, the home service provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the home service provider determines that an error was made, the home service provider shall refund or credit to the customer any tax, fee or charge erroneously collected from the customer for a period not to exceed two years. If the home service provider determines that no error was made, the home service provider shall provide a written explanation of its determination to the customer

(3) Any customer that believes that a tax, fee or charge assessed by the City in the customer's bill for mobile telecommunication services is erroneous or that an assignment of place of primary use or the City of Commerce City as taxing jurisdiction on said bill is incorrect, may file a claim in the District Court of Adams County, Colorado after complying with the provisions of this subparagraph B.

(4) As used in this subparagraph B, unless the context otherwise requires:

(a) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. § 116-126, as amended.

(b) "Customer" means customer as defined in Section 124(2) of the Act to be (i) the person or entity that contracts with the home service provider for mobile telecommunication services; or (ii) if the end user of mobile telecommunication services is not the contracting party, "Customer" means the end user of the mobile telecommunication services, but this clause applies only for the purpose of determining the place of primary use. The term "customer" does not include (i) a reseller of mobile telecommunication services; or (ii) a serving carrier under an

arrangement to serve the customer outside the home service provider's licensed service area.

- (c) "Home Service Provider" means a home service provider as defined in Section 124(5) of the Act to be the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.
- (d) "Mobile Telecommunication Services" means mobile telecommunication services as defined in Section 124(7) of the Act to be commercial mobile radio service as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999.
- (e) "Place of Primary Use" means the place of primary use as defined in Section 124(8) of the Act to be the street address representative of where the customer's use of mobile telecommunication services primarily occurs which must be (i) the residential street address or the primary business street address of the customer; and (ii) within the licensed service area of the home service provider.
- (f) "Taxing Jurisdiction" means taxing jurisdiction as defined in Section 124(12) of the Act to be, for purposes of this Code, the City of Commerce City, Colorado.

#### **Regulation 20-4-2**

Except as provided in this Section 20-4-2 as to the taxability of mobile telecommunication services, telecommunication services, whether international, interstate or intrastate, are taxable as tangible personal property, whether furnished by or through governmental, public or private corporations or enterprises, including mutual companies and including the sale of prepaid calling cards.

The sales tax shall be paid on additional listings, joint use of service, non-talking service circuits, leased circuits and facilities, local exchange service, and regardless of whether on a flat or measured basis, service connections, installations or connection charges, and sales of tangible personal property such as telephone directories, etc. The tax attaches to all amounts paid for telecommunication services, irrespective of whether there is actual consumption or not. In the case of discount or penalty, the tax attaches to the amount actually paid.

Only in the case of exclusively governmental purchases of telecommunication services is the sale of such services exempt. This exemption extends to no other category of business operations or to any other persons purchasing such services within the City of Commerce City

Governmental organizations that purchase such services in the performance of their propriety, as opposed to their governmental functions, must pay the tax on such services purchased or charge the tax to any non-exempt persons and individuals on the proportionate use by such persons of such facilities for non-governmental purposes.

Telecommunication services shall not include carrier access services or private line service.

If a taxpayer presents to the City written proof of double taxation of the said telecommunication services, the City shall credit against the tax accruing under this article the amount of tax actually paid by the taxpayer to the other taxing entity. If the tax accruing under this article exceeds the amount of the tax actually paid by the taxpayer to the other taxing entity, the taxpayer shall pay the difference to the City.

The credit provided for in this regulation shall not be allowed if the tax actually paid by the taxpayer to the other taxing entity was not by law required to be paid.

#### **4-3     Gas, Electric, and Heating Services**

On the purchase price paid or charged for steam or other heat, for gas and electric services, for steam, heat, gas and electricity furnished and sold for domestic or commercial consumption and not for taxable resale.

##### **Regulation 20-4-3**

Gas and electric etc., service, whether furnished by or through governmental, public or private corporations or enterprises, is taxable when furnished and sold for domestic and commercial consumption. The tax attaches to the amount actually paid.

Such services, whether furnished by municipal, public or private corporations or otherwise, is taxable when sold for domestic, commercial or industrial consumption, when not resold in its original form or when not becoming a constituent or component part of, or entering directly into the item manufactured for subsequent taxable resale.

Steam or other heat, gas and electric services, sold for exclusively governmental use only, are exempt, as is the sale of such services for “resale” as above.

Governmental organizations on purchasing such services in the performance of their proprietary functions and reselling such services to any other persons or individuals, must either pay the tax on the services so purchased or must charge the tax to the individuals or persons purchasing such service for such non-governmental use.

Gas and electric service connections, installations or connection charges are taxable on the full amount charged with no deductions for labor to install or connect such “service”.

#### **4-4     Pay, Cable and Subscription Television Service**

On the purchase price paid or charged for pay, cable or subscription television services sold, purchased, leased, rented, furnished or used.

##### **Regulation 20-4-4**

The City Sales and Use Tax is due on all “pay”, “cable”, or “subscription” television services sold to the full amount of the charge for such services rendered. The tax is due on the total charge for service connections, installations and connection charges and all and any other similar charges made for such services.

#### **4-5     Room and Accommodations Service**

On the purchase price paid or charged on the lease, rental or on the transaction of furnishing rooms or accommodations to any person who for a consideration uses, possesses, or has the right to use or possess, any room or rooms or other accommodations in any hotel, apartment hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, or any other place

furnishing rooms and accommodations under any concession, permit, right of access, license to use or other agreement or otherwise. (Subject to Subsection 20-5-K-(1).)

#### **Regulation 20-4-5**

The Commerce City Sales and Use Tax is imposed upon the transaction of furnishing rooms or accommodations where the rental period is for a term of less than thirty (30) days. (Refer to Subsection 20-5-K-(1).)

The furnishing of rooms or accommodations in any hotel, apartment hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, or any other place furnishing rooms and accommodations for a consideration is a taxable sale.

The term “room” shall mean, in addition to a regular sleeping room or unit, a meeting room, a display room, a banquet room or any special purpose room for which a charge is made. The term “accommodations” shall include the furnishing of a space in any auto camp, trailer court or park under any concession, permit, right of access, license to use, or any other agreement, by or through which any of the above rooms or accommodations may be used or occupied.

Governmental and “exempt” organizations shall not transfer their exemption status to any person who rents rooms or accommodations from or through them. Any such organizations which rent rooms or accommodations to their members or guests, regardless of how the charge is made, must apply for and obtain a license and must collect and remit the tax due.

If rooms or accommodations are paid for by drafts on government or Exempt Institutions funds, that room or accommodation service shall be considered to be in the governmental or exempt capacity of the institution.

#### **4-6     Meal Service, Cover, Door and Other Related Charges**

On all cover charges, door or other similarly termed and related charges, and on the purchase price paid for or charged for all meals, food serviced or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food is regularly sold, including sales from pushcarts, motor vehicles, mobile facilities, or any other place at which meals or food are regularly sold or are required by law to have food or meals available for sale.

#### **Regulation 20-4-6**

The sale of meals shall be taxable whether “paid for” by money or its equivalent, coupons, or by other consideration including the consideration of labor. Cover charges, door charges or minimum service charges, “membership” fees, etc., if any, shall be included in the gross taxable sales amount and are not to be excluded as non-taxable services. Meals furnished by hotels, motels, boarding houses, inns, etc., to guests under the so-called American Plan, or when sold in combination with other services, are taxable as retail sales and proportionate value of the meal shall be determined and the tax collected and paid thereon.

When the tangible personal property in the form of meals or meal service is furnished to any individual in return for the consideration of labor, that meal or service is taxable and the charge shall be based upon the total cost to prepare and serve such meal.

Purchase of products which are to be served as part of or together with the taxable meal, are non-taxable to the vendor. Such non-taxable items include purchases of food and drink, and paper cups, paper napkins, paper plates, paper straws, and other products furnished with the meal or refreshment for one-time use only.

Equipment and fixtures used for the preparation of the meal or furnished as part of the eating facilities, and other items not consumed with the meal such as linen napkins, glassware, silverware, etc., are taxable to the vendor. Private clubs making sales of meals or refreshment to members and guests are taxable in the same manner as “public” restaurants, etc.

Meals regularly sold at industrial boarding houses, commissaries, private clubs, cafeterias of industrial or commercial companies, and all other such places, are taxable. Meals sold at cafeterias operated by or for colleges, universities, private and public school systems and other institutions serving meals to staff, faculty, and pupils or others, are also subject to the collection of the Commerce City Sales and Use Tax on such meal service.

Fraternities, sororities, dormitories, boarding houses, and other such places that sell meals in combination with rooms and accommodations and other services are required to have a sales tax license and collect and remit the sales tax on the total cost of meal service based on the total cost of the preparation and serving of such meals.

Lodges, charitable or religious organizations, and other similar organizations, must collect the tax on all meals served. If such organizations sell or serve meals to members of the public who are not members of that organization, the sales tax must be collected on such meals or service based on the total cost of preparation and serving of meals. If meals are served exclusively to members of the lodge, club, charitable or religious organizations, except only on very rare or special occasions, the serving of such meals may not be subject to the sales tax; however, the food purchased to prepare such meals would then be taxable. Clearance should be obtained from the Director with regard to whether Use or Sales Tax will apply.

The tax shall be collected on meal tickets when they are purchased and not when the meals are served. Persons regularly engaged in the business of catering must be licensed and collect the tax. All sales of meals by the above listed establishments to their employees, are taxable. When employees receive meals in return for their labor or services rendered, the tax is due on such transaction equally, as on any other sale or transfer of tangible property, as defined. The tax will be based on the total cost to prepare and serve such meals.

Coupons or certificates rendered for the price of a meal shall be taxable on the regular or normal sale price of that meal. The restaurant, etc., must include in its net taxable sales the sale price of meals paid for by a coupon or certificate arrangement.

All sales of fermented malt beverages, malt, vinous or spirituous liquors are taxable.

#### **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.

#### **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, rentals, 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.

#### **4-8 Automotive Vehicles**

On the purchase price paid or charged on the sale, purchase, lease, storage or use of an automotive vehicle, mobile machinery or self-propelled equipment registered or legally required to be registered by a resident of this City, except no sales or use tax is to be paid by a resident who qualifies for an exemption as provided in Section 20-5-C-(3) who has dual residency within and without this City or who is legally registered under the International Registration Plan (IRP) or any successor agreement.

##### **Regulation 20-4-8**

Except as otherwise provided in this Code, the Sales or Use Tax is imposed on every trade or sale, within Commerce City involving the payment of money, evidence of indebtedness, or other consideration, including the consideration of labor, of new and used automotive vehicles as defined, whether the seller is engaged in business or is making an isolated sale or trade.



Automotive vehicle dealers who are licensed under the Code may deduct on the sales tax return the value of merchandise taken in trade when such merchandise is to be resold in the usual course of the dealer's business. This provision applies only to licensed dealers within the State of Colorado. (Refer to Specific Industry "Automotive Vehicle Dealers".)

Except as otherwise provided in this Code, any resident of Commerce City who purchases a motor vehicle, trailer, or semi-trailer, etc., whether new or used, outside the City for use within the City must pay the Use Tax of four and one-half percent (4.5%) on the purchase price of any vehicle upon registration of the said vehicle to an address in Commerce City. Except as otherwise provided in this Code, any resident who registers a vehicle at an address other than his principal residence or place of business within Commerce City for the purpose of evading the Sales or Use Tax shall be considered in violation of the Code and subject to the penalties set forth herein.

If the owner or purchaser of a motor vehicle is, or was, a non-resident of Commerce City or a resident with dual residency within and without Commerce City and he legally registered, took title and legally licensed the motor vehicle outside the City including, by way of illustration and not limitation, registered under the International Registration Plan (IRP), he is not obligated to pay the Use Tax or Sales Tax imposed by the City to the extent of the exemption authorized in Section 20-5-C. However, initial registration of the motor vehicle to a location inside of Commerce City will constitute a taxable use and the tax will be due unless exempted pursuant to Section 20-5-C(3).

If the Lessee of a motor vehicle is or was a non-resident of Commerce City or a resident with dual residency within or without Commerce City and he legally registered, took title and legally licensed the motor vehicle outside the City including, by way of illustration but not limitation, registration under the International Registration Plan (IRP), he is not obligated to pay the Use Tax or Sales Tax imposed by the City to the extent of the exemption authorized in Section 20-5-C. However, initial registration of the motor vehicle inside of Commerce City will constitute a taxable use and the tax will be due to the extent not exempted pursuant to Section 20-5-C-(3).

Except as otherwise provided in this Code, the registration to a location within the City of an automotive vehicle, mobile machinery or self-propelled equipment by any resident of the City will be considered a taxable transaction, even though there is no immediate use of the automotive vehicle, mobile machinery or self-propelled equipment inside the City or the claim is made that there will be no use inside the City of such automotive vehicle, mobile machinery or self-propelled equipment.

Except as otherwise provided in this Code, any resident of Commerce City who registers any automotive vehicle in the City and intends to use that vehicle subsequently in interstate commerce, shall be subject to tax to the same extent as any other resident.

Except as otherwise provided in this Code, any resident of Commerce City who may or may not have dual residency both within and without the City who registers any automotive vehicle in the City must pay the tax on the full amount of such taxable purchase or lease price. There will not be an allowance or proration made for that vehicle's percentage use within and without the City.

Except as otherwise provided in this Code, only governmental institutions purchasing automotive vehicles in this City or auto sales or leasing agencies purchasing vehicles in the City for "resale" may purchase without payment of the four and one-half percent (4.5%) Sales and Use Tax on such purchase price.

Parts and accessories for automotive vehicles are considered to be of the same nature as other tangible personal property and, accordingly, are taxable under the Commerce City Code as to purchase, sale or use inside the City. If automobiles are exchanged or traded between individuals who are not licensed or engaged in the business of selling automobiles in the City and in the State of Colorado, then the retail value of each automobile is the purchase price on which Sales and Use Tax shall be paid by each owner.

#### **4-9 Vending and Amusement Devices**

On the purchase price paid by or charged to the owner of vending or amusement machine devices for articles of tangible personal property that are to be subsequently sold in those coin-operated vending machines or devices. The operator, owner, or person selling tangible personal property by coin operated vending machines or devices shall be liable additionally for the Sales and Use Tax on the purchase or use of the coin operated devices and on any subsequent lease, rental or sale thereof on the full lease, rental or sale price.

#### **Regulation 20-4-9**

The vending of individual articles of tangible personal property which are vended through coin operated vending machines is exempt from the Sales Tax. In lieu thereof, the operator or owner of the vending machine shall pay Sales and Use Tax upon his purchase of the items of merchandise to be so vended. Such vendor shall file regular Use Tax returns with Commerce City, reporting his purchase price on all such merchandise purchased and actually vended through such devices, and remit the tax thereon.

This section of the Code will clearly apply to vendors of coin-operated devices that vend tangible personal property on which then the owner or operator of the device will owe Sales or Use Tax on the cost of materials so vended from such device.

However, on the use of any coin or other device not vending articles of tangible personal property as its prime function, subject to use tax, under this Code, but rather where the object utilization of such device is the short term rental of the tangible personal property device itself, (the coin-operated or other machinery and equipment) then the tax shall fall on the gross receipts from utilization or rental of such device. In such event and regardless that a vendor's total gross sales might consist of a number of such rental or sale transactions, each of which might have a retail sale price of less than the minimum taxable sale, the tax would be computed and remitted on the total sale or rental price of all such transactions.

Regardless that a vendor's total gross sales consist of a number of such rental or sale transactions, each of which has a retail sale price of less than the minimum taxable sale, the tax must be computed and remitted on the total sale or rental price of all such transactions.

When any vendor fails to account properly or keep accurate records as to his purchases of items or articles of tangible personal property subsequently to be vended in vending or amusement devices for purposes of remittance of the City Use Tax, as in the case of food and commodity vending devices, he will be held liable for the total gross receipts vended from such devices.

The vending machine operator or owner will list with the Director of Finance the location of each machine, and each machine must be stamped or bear other identification showing the owner's or operator's name, his City Tax license number, and his address. Such identification shall be so devised and affixed as to be visible in full at all times. The proprietor of the property on which such vending devices are placed and where such devices do not display (1) the name of the owner or operator of such vending devices, (2) date of placement on the proprietor's property by the owner, (3) address of such situs of vending machine, and (4) Commerce City's Sales and Use Tax License Number of the owner or operator, shall be summoned to the City Municipal Court as being in violation of Code Subsection 20-14-1 "Evasion and Avoidance of Tax". The operator or owner shall keep accurate records of the gross value of merchandise vended from each machine located within Commerce City, the time and place of installation of each machine, the date removed from any location, and any rentals received from the owner of the premises where each machine is located. Such rentals and gross value of the merchandise vended from such machines are both subject to the imposition of the City Sales and Use Tax. (The identification requirements also apply as in (1), (2), (3) and (4) above as to amusement devices not vending personal property.)

The owners or operators of vending machines shall be considered to be the ultimate consumers of such machines or devices, and shall pay Sales or Use Tax upon the purchase or use thereof. The lease or rental of a vending machine to others for their use in vending any product or merchandise, or otherwise, requires

that the owner thereof collect and remit the Sales and Use Tax on the rental or lease price regardless of whether Sales or Use Tax was paid on the original purchase price of the machine by the owner. If a purchaser buys 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 or subsequent to any rental or lease term, a tax shall be paid on the original purchase price, or the fair market value of the property by the purchaser, and in addition thereto a tax shall be paid on the rental or lease price to the customer. (Tax on leases or rentals of amusement devices applies equally as in the case of vending devices above.)

Where a vendor is conducting a combination of businesses including machine vending and non-machine vending, and/or renting or leasing machines, he shall have a Sales Tax license, collect and remit the Sales and Use Tax on the rental or lease of the machines and on the non-machine vending, and also remit the Use Tax on the property vended through any vending machine that he so operates.

#### **4-10 Cost of Tangible Personal Property Used or Acquired**

On the cost of goods or tangible personal property purchased or acquired without payment of the City Sales Tax and used, stored, distributed or consumed either personally or in conjunction with the rendering of services.

##### **Regulation 20-4-10**

A person who purchases or acquires tangible personal property without payment of Sales Tax and uses the property for his own business or personal purpose (including for any non-resale purposes) is liable for Use Tax on the purchase price thereof, or fair market value thereof at the time of acquisition if no purchase was made, and shall pay the tax directly to the Director of Finance.

If a purchaser buys 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 or subsequent to any rental or lease term, a tax shall be paid by the purchaser on the original purchase price, or the fair market value of the property thereof at the time of acquisition if no purchase was made.

Items or articles of tangible personal property used by a vendor exclusively for the purposes of demonstration, display, or stock inventory purposes, and which "demonstrator models" are to be eventually resold in the general conduct of business are not taxable to the vendor. However, any such articles, including automotive vehicles which are actually utilized by the vendor, his employees, agents or customers for other than exclusively demonstration purposes, display, or stock inventory purposes, are taxable on the purchase price or fair market value to the vendor.

A person purchasing tangible personal property to be given away in any manner is the user or consumer and shall be liable for the tax thereon, including but not limited to advertising gifts, shoppers' guides, catalogues or other property given as prizes, premiums, or for goodwill purposes.

A person who purchases or acquires tangible personal property in a transaction that is not at arm's length at a value that is less than fair market value shall be liable for payment of a use tax based on the fair market value at the time of acquisition of the tangible personal property regardless of a lesser cost of acquisition.

#### **4-11 Bad Debts Collection**

On the amount of collection, during the current taxable period, of bad debts that had, during a previous taxable period, been deducted.

**Regulation 20-4-11**

Any bad debts previously deducted from gross taxable sales on City Sales Tax Return and subsequently collected must be re-reported as taxable sales and the tax remitted thereon.

**4-12 Tax Must Be Collected Notwithstanding Sale Made Outside City**

Every vendor required or permitted to collect the tax shall collect the tax imposed by the provisions of this Code notwithstanding the following, if the property purchased is intended to be brought into the City for use, storage, or consumption in the City:

- (A) That the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the vendor at a point outside of the City as a result of solicitation by the vendor through the medium of a catalogue or other written advertisement, or by any other means; or
- (B) That the purchaser's order or contract of sale was made or closed by acceptance or approval outside of the City or before said tangible personal property enters the City; or
- (C) That the purchaser's order or contract of sale provides that said property shall be, or it is in fact, procured or manufactured at a point outside the City, and shipped directly to the purchaser from a point of origin; or
- (D) That said property is mailed to the purchaser in the City from a point outside the City or delivered to a carrier at a point outside the City, F.O.B., or otherwise, and directed to the purchaser in the City, regardless of whether the cost of transportation is paid by the vendor or by the purchaser; or
- (E) That said property is delivered directly to the purchaser at a point outside the City.

**Regulation 20-4-12**

Sales of tangible personal property by any person or vendor to a Commerce City resident are taxable even though the property is delivered to a location outside Commerce City, if the property is for use, storage, distribution or consumption in the City. The vendor is required to collect and remit the tax and the customer shall pay such tax.

The vendors who deliver tangible personal property, or cause to be delivered such property purchased from them at retail to a Commerce City resident are subject to the provisions of the Commerce City Sales and Use Tax Code. Any vendor who delivers or causes such deliveries to be made without first complying with the Commerce City Sales and Use Tax Code or any other person aiding or abetting the noncomplying vendor, including, but not limited to, common or contract or commercial carriers so delivering such tangible personal property for the vendor, shall be deemed by the Director as guilty of a violation of this Code and shall be prosecuted accordingly. (Refer to Specific Industry Section "Common, Contract and Commercial Carrier".)

Purchasers of tangible personal property, the storage, use or consumption of which is subject to the City Sales and Use Tax, must pay the tax either to the vendor, if he is licensed and authorized to collect the tax, or directly to the City of Commerce City.

The law provides the following methods for the payment of Use Tax:

- (1) If the vendor maintains a place of business or office in the City or State, such vendor shall be responsible for the collection and remittance of the Use Tax on all sales made by such a vendor for use, storage, distribution or consumption in Commerce City regardless of whether or not the purchaser buys through offices in the city or state, or orders by mail or otherwise direct from the retailer in another city or state.
- (2) If the vendor does not have an office or place of business in the city or state, but does have salesmen or other representatives soliciting orders and making sales in Colorado and Commerce City, then such a vendor may be responsible for the entire tax on all sales made for use, storage, distribution or consumption in Commerce City and if such vendor does not assume such responsibility, then such salesmen or agents must collect and remit the Commerce City Tax.
- (3) If the Sales and Use Tax is not collected by the vendor, or his salesmen, the purchaser must pay the tax to the Director of Finance directly. All vendors or salesmen responsible for collecting the Sales and Use Tax shall apply for and obtain from the City of Commerce City a Sales and Use Tax License, and in the event there is a failure to so apply for a Commerce City Sale and Use Tax License on the part of the salesman or vendor, then he shall be subject to the penalties as set forth herein.
- (4) At the Director of Finance's discretion a cash deposit may be required of any transient salesman or vendor subject to refund of such cash deposit upon complete compliance with the licensing and reporting provisions of this Code. The refund time limitations and other provisions set out in Section 10 of this code shall apply in cases of such cash deposit. The Director shall require a deposit in any amount sufficient to pay any tax liability of the transient salesman or vendor arising under this Code based on the best information available to the Director. (See also deposit requirements in the Commerce City Municipal Code Section 9-193)

#### **4-13 Warranty and Maintenance Services**

On the entire amount paid or charged for warranty and maintenance services relating to tangible personal property, whether included in the cost of tangible personal property relating thereto or sold separately.

##### **Regulation 20-4-13**

When an item of tangible personal property is rented with a warranty for the maintenance or servicing of the property for a given period of time, then the sales tax shall be imposed, collected and paid upon the rentals payable, including the value of the warranty. If a separate warranty, service or maintenance contract is purchased, then the entire sales price of the warranty, service or maintenance contract is subject to a sales tax.

#### **4-14 Manufactured Housing Units**

On the purchase price paid or charged on the purchase of a manufactured housing unit subject to the following terms and conditions:

1. A manufacturer or dealer of a manufactured housing unit is deemed a construction contractor and therefore is considered the final user or consumer of the materials and supplies used in construction or assembly of the manufactured housing unit and is required to obtain a manufactured housing unit permit from the City for the manufactured housing unit and make provision at that time for payment of any sales or use tax payable to the City. If the required permit is not obtained or if the sales or use tax is not paid to the City by the manufacturer or dealer, the buyer shall ultimately be liable for obtaining the permit and payment of the tax.
2. The Commerce City sales or use tax imposed pursuant to this section is payable as provided in Section 20-6-5 either on an estimated basis or on an actual basis.
3. If the manufactured housing unit is purchased outside the City and the buyer legally pays sales or use tax on the transaction at the time of purchase, the City will grant a tax credit as provided in Sections 20-5-M and 20-5-N.

For purposes of this section, a “manufactured housing unit” is defined as a preconstructed complete building unit or combination of preconstructed complete building units without motor power designed and commonly used for single-family, single unit residential occupancy by persons in either temporary or permanent locations, which unit or units are manufactured in a factory or at a location other than the residential site of the completed home and which unit or units are not licensed as a recreational vehicle.

#### **4-15 “Coins”**

On the purchase price paid or charged for coins sold, purchased, leased, rented, furnished or used.

#### **4-16 “Use”**

The use to which property is put, in order to bring about imposition of the tax, is not necessarily an ultimate usage, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the tax when the article purchased is actually possessed or used or made available for use after delivery is completed. This shall include the keeping, storage, withdrawing from storage, moving, installing, or performing other acts by which dominion of, or control over the property is assumed by the purchaser, except if held for resale as set out herein.

The storage, possession, use or consumption of an article of tangible personal property in the performance of a service or contract is sufficient to incur liability for the Use Tax.

Where tangible personal property is traded in an exchange between unlicensed individuals, the Use Tax is imposed on the fair market value of each article. Each owes the tax on the fair market value of the tangible personal property he receives in exchange. Any transaction or series of transactions which result in the transfer of title or possession, or both, of tangible personal property shall constitute a taxable exchange, as set out herein.

When no Commerce City sales tax has been paid on the acquisition of tangible personal property taxable under the Code for use, storage, distribution or consumption, the tax, shall be paid unless the transaction is otherwise exempt pursuant to the provisions of this Code, based upon the purchase price at the time of acquisition, except as otherwise provided in Regulation 20-4-10. However, no use tax shall be imposed for the original purchase transaction with respect to the use or consumption of tangible personal property within the City which occurs more than three (3) years after the most recent acquisition of such tangible personal property if within the three (3) years following such original acquisition, the tangible personal property has been significantly used outside the City for the principal purpose for which it was purchased. If the original acquisition of the tangible personal property is within three (3) years of the use or consumption thereof in Commerce City, any subsequent rental or use for the benefit of another in Commerce City shall also be taxable pursuant to Section 20-4-7 and Regulation 20-4-7 as a separate transaction.

The imposition of the Commerce City Use Tax falls on any property purchased for use, storage, distribution and consumption in this City whether that property was purchased in or out of state or outside the City, and that is not otherwise exempt under this Code.

#### **4-17 Commercial Shipping Materials**

On the purchase price paid or charged for commercial shipping materials sold, purchased, leased, rented, furnished or used.

## **Section 20-5     EXEMPT TRANSACTIONS, COMMODITIES AND “PERSONS”**

It shall be a violation of this Code for any seller to fail to collect, or any purchaser to fail to pay a tax levied by this Code, and on sales on which exemption is disputed.

Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless, the seller shall collect and the purchaser shall pay such tax; the purchaser thereafter may apply to the Director of Finance for a refund of such taxes paid as provided herein.

The purchase and sale of articles of tangible personal property not otherwise exempt are subject to the sales or use tax imposed herein as well as those specific services cited as taxable in Section 20-4. The list of exempt commodities or articles cannot be increased by implication or similarity. In all cases, the burden of proof is upon the taxpayer to establish that a sale is tax exempt.

### **Regulation 20-5**

The purchase and sale of all articles of tangible personal property and taxable services to all persons not otherwise exempt is subject to the Sales or Use Tax imposed thereon. Exemptions are strictly construed. The list of exempt commodities cannot be increased by implication or similarity. In all cases, the burden of proof is upon the vendor to establish that the sale is tax exempt, with delivery receipts, bill of lading, invoices with purchaser's address, building permit number or other pertinent evidence. Where a taxpayer claims an exemption under the Code, the burden is upon him to clearly establish the right to such exemption.

It is the duty of the vendor to collect and the purchaser to pay the tax unless the transaction is clearly exempted by the Code.

Whenever there is a disagreement between a vendor and a buyer as to whether a given sale is or is not tax exempt under this Code, the vendor will collect and the buyer will pay the tax, and the vendor shall thereupon give to the buyer a receipt or certificate on such form as may prescribed by the Department of Finance, stating therein a description of the transaction. The buyer may then make application to the Department of Finance for a refund.

The Sales and Use Tax Code fundamentally imposes the tax upon tangible personal property which is purchased, consumed and used and exempts only that which is purchased for resale. In addition thereto, the Code expressly permits the exemptions set out hereafter.

The following exemptions in Subsection 20-5-A through K are in the same format as on the City Sales and Use Tax Return. Those exemptions in Subsection 20-5-L through T may, as applicable, be taken as deductions on line “K” and explained in Schedule “A” of such tax return.

Exempt from the imposition of the Commerce City Use or Sales Taxes, or both, as the context sets forth, are the following:

### **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 services. 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.

**Regulation 20-5-A-(1)**

Under the Commerce City Sales and Use Tax Code, all sales, rentals and leases of tangible personal property including any services or labor used to effectuate the sale are taxable to the full extent of the purchase price or sale price charged or paid. This means that the tax would fall on the aggregate value in money of anything or things paid or delivered, or promised to be paid or delivered by lessee, or any purchaser, to a retailer or any person in the consummation of a lease or a retail sale as defined without any deduction therefrom on account of the cost of the property sold, cost of materials used, the labor or service cost or any other expense whatsoever.

Labor and Service must be included in total taxable purchase price as follows:

Labor and/or service sales included in the sale of tangible personal property are taxable under the City Sales and Use Tax Code to the full extent of that purchase price paid or charged, and such labor or service is not separable and may not be deducted or segregated from the taxable sale which involved to any degree or extent whatsoever the transfer or utilization of tangible personal property, herein, under the following conditions precedent wherein that labor and/or service is ordinary and necessary to:

- (1) Make, manufacture, process, form, shape, fashion, fabricate, forge or make to order, improve upon and/or install, raw materials, process or manufactured tangible personal property, including those delivered as a component part of a building or any other structure, or appurtenance thereto. Such component may include, but not be limited to, anything from a bathroom rough-in to a packaged, or prefabricated house, or;
- (2) Convert tangible personal property from its original, preprocessed or pre-manufactured state into another nature as a component of tangible personal property, or as another article of tangible personal property which, when installed or placed, may lose its separate identity or become a part of other tangible personal property, or real property, or;
- (3) Devise, develop or produce property rights inherent and which are of marketable value or continued or general usefulness, or;
- (4) Sell tangible personal property together with an agreement or contract to maintain the usefulness of such property.

Labor and Service may be excluded wholly or in part from total purchase price:

- (1) The labor and/or service sales separately sold or rendered or contracted to be rendered at a future date or upon some contingency, and which are separately identifiable, and the value of which is stated in all documents relating to the transaction and which do not meet any of the tests stated above or are not specifically exempted elsewhere in this Code are subject of claim of exemption from taxability under the Code. The identification and burden of proof for such exemption from taxability is upon the vendor or furnisher of such labor and/or service.

- (2) Remake, remanufacture, reprocess, reform, reshape, refashion, refabricate, re-forge or repair to order or bring to a state of usefulness anew, tangible personal property, the ownership of which may reside in the purchaser, or;
- (3) Labor or Service utilized in the conveyance or sale of tangible personal property when installed, attached or affixed to real property, or otherwise used in the refurbishing, constructing, replacing or repairing of real property is deductible as the non-taxable portion of any such work that may involve a retail sale as defined, conditioned upon the limitations and qualifications as set out in Subsections 20-3-63, 20-3-44, 20-4-1, 20-4-7 and Specific Industry "Construction and Contractors rules and regulations."
- (4) On any such labor or service charges utilized in installation, etc., as above, of tangible property to real property the vendor may petition the Director of Finance for the allowance to apply the four and one-half percent (4.5%) tax to that percentage of the total sale as tangible property bears to such total sale, in these combined sales of labor services and tangible personal property.
- (5) Where there is no conveyance or utilization of any tangible personal property whatsoever on any "sale" or pursuant to any contract, then such exclusively service sales are not taxable, subject to the review approval of the Director of Finance, according to provisions of Section 20-1 and regulation thereof.

Nothing contained in these regulations is intended or is to be construed as the limiting of legislative intent of taxability as stated in the Code in Subsections 20-1-1 and 20-1-2. Procedure for obtaining a written opinion of the Director of Finance as to the exemption from this Code is state in Regulation 20-1-2.

#### **B-(1) Sales for Taxable Resale (Wholesale) – of a Finished Product - Component Parts**

The purchase price paid or charged on the sales to and purchases of tangible personal property by a person engaged in manufacturing or compounding for use, profit or sale, shall be deemed a wholesale sale when it meets all the following conditions:

- (A) Is actually and factually transformed by the process of manufacture;
- (B) Becomes by the manufacturing process a necessary and recognizable ingredient, component and constituent part of the finished product; and
- (C) Its physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.

The purchase, production or acquisition of materials or product shall not be exempt from taxation under this Tax Code in those cases where a person engaged in manufacturing, compounding or processing uses the materials or product in the performance of a contract for its own business operation. If the materials or product used in the performance of such contract are manufactured, compounded, processed or acquired in the City, the taxable event or taxable moment occurs at the time the materials or product are manufactured, compounded, processed or acquired in the City. If the materials or product are acquired or used in the City but are not manufactured, compounded or processed in the City, a taxable event or taxable moment under the Tax Code occurs retroactively to the time of such acquisition in the event the materials or product are subsequently used in the performance of a contract with its business operations, regardless of the location where such usage occurs.

### **Regulation 20-5-B-(1)**

Sales to and purchases of tangible personal property by a person engaged in manufacturing, compounding or processing a product which ultimately is to be sold at retail, are exempt from the imposition of the Sales and Use Tax. The exemption shall be conditioned upon (1) the tangible personal property actually being used or consumed directly in the primary production, processing, manufacture, compounding or refinement, and becoming a necessary integral or component part of the finished product, wholly or partially, by either chemical, manual or mechanical means and (2) the finished product being sold at retail. In addition, the physical presence of the tangible personal property in the finished product must be essential to the use or consumption of the product in the hands of the ultimate consumer.

This manufacturing exemption does not apply to the purchaser of (1) items not used directly in the compounding or manufacturing operations; (2) items used in the maintenance, managerial, sales and other non-operational activities; (3) items used by persons who are designated under this Code as being ultimate consumers of materials that they purchase, manufacture, compound or process for their business operation; (4) equipment, tools, machinery and supplies, and (5) tangible personal property which may be used or consumed in the production, manufacture, or compounding but do not become an integral or component part of the finished product (such as wastage), are taxable to the user or consumer on their proportionate value.

Abrasives, used by a cutlery manufacturer, explosives, foundry patterns, designs and drawings do not become an ingredient, component, constituent or part of a manufactured product and the purchase of such tangible personal property are not exempt from the tax.

A photographer, artist, painter, sculptor or other person in such similar occupations, may purchase tax-free only materials or trade items which are for resale or become an integral or component part of the item, work or piece to be resold. Purchases of film, film developer, proof paper, and other items used by photographers for developing and printing services in the various stages of making finished photographic prints are taxable as they do not become component parts of, nor are they coated upon or impregnated in the final product. However, print paper on which the finished photographs are made and tinting materials are component parts and are exempt from the tax.

Manufacturers, compounders and processors must include in their gross taxable sales the cost of any products produced, processed, compounded or manufactured by them which are withdrawn from their stock for their own use or consumption and not ultimately sold at retail. If the tangible personal property is capitalized by the taxpayer, then the tax shall be levied on the capitalized value of the tangible personal property. (Refer to Regulation 20-5-B-(4).)

This exemption does not apply to purchases by miners for use in their mining, reduction or milling operation, by railroads, by transportation services, or by industrial or commercial users, unless they are engaged in manufacturing or compounding. Refiners who make a product instead of merely removing impurities from a product are manufacturers.

This exemption does not apply to the sale of materials or product to a consumer because, in and of itself, that sale is a taxable retail transaction. Accordingly, the sale to a contractor of component parts or materials used by the contractor or furnished to others by the contractor in conjunction with the contractor's performance of a contract such as a construction contract, regardless where performance of the contract is to occur, is not an exempt sale because the contractor is deemed the consumer of such parts or materials in the performance of the contract.

### **B-(2) Sales for Taxable Resale (Wholesale) - ~~Exempt~~ Commercial Packaging Materials**

The sale or purchase of ~~exempt~~ commercial packaging materials as defined in this Code shall be deemed as a wholesale sale.

**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.

The sale of containers, etc., as listed above, to a person performing services, is taxable. Retailers or vendors of such containers, etc., have the burden of proving that the sale is not taxable. In all doubtful cases they should require the purchaser to give a written statement of facts showing the exempt use before selling tax-free.

The Supreme Court decision overturning State Regulation governing State Taxability of returnable containers has no effect on the Commerce City Code which specifies that such returnable containers are definitely taxable to the manufacturer.

Containers, labels and shipping cases which are returnable to the person who sells and delivers merchandise in them are taxable. In such a case, the manufacturer or compounder is the user or consumer of such returnable containers and he must pay the tax on his purchase of such containers including, but not limited to, those which are identified by a permanent trade mark, serial number, or identifiable shape.

Deposits required by the vendor on returnable containers are includable in the gross taxable price charged. The rule as to returned goods in Subsection 20-5-H-(1) applies on return of such containers. Such containers sold to persons performing a service are also taxable.

**B-(3) Sales for Taxable Resale (Wholesale) - Newsprint, Printer's Ink**

The sales to and purchases of newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales.

**Regulation 20-5-B-(3)**

The sale of newsprint and printer's ink shall be exempt from the Sales and Use Tax if the sale is to and the purchase is by publishers of newspapers, as defined in Subsection 20-5-K-(3) of the Code and the accompanying regulation, and commercial printers for their use and consumption in the printing process of a product which ultimately is to be sold at retail.

This exemption shall in no way limit the tax that may be due from the commercial customers of any newspaper, as defined, or their publishers for taxable sales of advertising matter distributed in the City, separately or in conjunction with the distribution of any "newspaper" as defined, or taxable transactions involved in the make-up of that matter otherwise taxable under this Code.

In addition, a commercial publisher or printer may purchase tax-free for resale any tangible personal property which may be used or consumed in the printing process and which shall become an ingredient or component part of the printed article to be sold at retail. (Refer to Subsection 20-5-B-(1) of the Code and the accompanying regulation.)

(1) Exempt purchases of tangible personal property for resale will be limited to the following:

(a) Paper:

1. Newsprint
  2. Stock on which finished product is printed and delivered to customer.
  3. Wrapping materials for finished product which is sold to customer.
- (b) Ink:
1. Printer's ink
  2. Ink additives
  3. Overprint varnish
- (c) Chemicals:
1. Anti-offset sprays (liquid or powder)
  2. Fountain etch solution
  3. Gum solution
  4. All component chemicals when used for above
- (d) Materials:
1. Padding compound
  2. Stitching wire or staples
  3. Bookbinder's tape
- (e) Commercial printers or publishers may purchase tax-free for resale other materials if both of the following conditions exist:
1. The printer must segregate charges made for such materials to his customer and collect the City Sales or Use Tax on those charges irrespective of the fact that the sales of the printed product may be exempt from the tax for various reasons, such as, deliveries out of the City, sales in interstate commerce, sales for resale, etc.
  2. The printer must apply for and file with his suppliers a letter of exemption from the City listing the specific materials that he will segregate and invoice in (e) 1 above.

This list of exempt purchases cannot be increased by implication or similarity. Except for newsprint and printer's ink all listed items are subject to the Use Tax when applied to property not sold at retail or when applied to the customer's stock.

- (2) Printed matter which is partially printed, invoiced to the customer and then held in stock for further imprinting is taxable on the full price, including the cost of the subsequent imprinting. This subsequent imprinting before delivery is the completion of the initial sale and is not deemed to be a separate transaction.
- (3) Imprinting on a customer's product is taxable to the full extent of the purchase price to the customer.

The term "newsprint", as used in this Subsection, shall be defined as the machine finished paper, chiefly from wood pulp, and used mostly for newspapers.

The Sales Tax shall be imposed on the retail selling price of all printed matter not otherwise exempt. When stamped envelopes or governmental postals are purchased and printed for the customer or where stamps are provided, the amount of the postage may be deducted from the total charge to the customer in determining the Sales Tax basis.

#### **B-(4) Sales for Taxable Resale (Wholesale) - To Other Licensed Retailers**

The sale by wholesalers or retailers to a licensed retailer, jobber, dealer or other wholesaler for purposes of taxable resale, and not for the retailer's, jobber's, dealer's or wholesaler's own consumption, use, storage or distribution, shall be deemed to be wholesale sales.

#### **Regulation 20-5-B-(4)**

The Sales and Use Tax is not imposed upon wholesale sales. A “wholesale sale” is a sale to a licensed retail merchant, jobber, dealer or other wholesaler for resale, manufacture, or for further processing prior to the ultimate taxable resale of that property sold at wholesale.

“Retail sales” are defined as “all sales made within the City, except wholesale sales.” A sale by a wholesaler to a user or consumer and not for resale is a retail sale and is taxable unless otherwise exempt. A sale will be assumed to be a retail sale if made to anyone not having a Sales and Use Tax license.

In addition to being a tax on certain services and uses, the Use Tax is also a complement to Sales Tax. Since Sales Tax is imposed only on retail sales and taxable services, Use Tax shall not apply to the storage, use or consumption of tangible personal property purchased by a licensed retailer, jobber, dealer or other wholesaler for ultimate taxable resale within the regular course of business in this City and then actually resold by such licensed retailer, jobber, dealer or other wholesaler.

Tangible personal property that was purchased tax-free for resale or as an ingredient or component part of a manufactured or compounded product and is subsequently withdrawn from stock and/or modified prior to use shall be taxed at the purchase price of all materials, labor and other charges included in the finished product or in a work-in-process inventory, as applicable. If the tangible personal property is capitalized by the taxpayer, then the tax shall be levied on the capitalized value of the tangible personal property. The Use Tax liability attaches at the time the tangible personal property and service is converted from tax-free status to a taxable use and is levied and applied retroactively to the purchase or acquisition of such tangible personal property and taxable services and is therefore payable to the jurisdiction where such tangible personal property was originally purchased or acquired provided that such jurisdiction actually imposes a sales or use tax equal to or greater than the Commerce City tax.

Wholesale dealers should have record of the Sales and Use Tax License numbers of every purchaser to whom he sells at wholesale. (He may keep these numbers of his ledger, in a separate card index, in a suitable book or on each individual invoice.)

It is required that each invoice have the complete name and address of the purchaser on all wholesale invoices. Invoices which do not show a name but are made out to cash must always be considered to be retail sale invoices and taxable. If the purchaser has a Sales and Use Tax License, the dealer may sell to him tax exempt, provided the purchaser is substantially engaged in the business of reselling the property he is buying. Even though a purchaser does have a Sales and Use Tax License, the dealer is not relieved of the responsibility of collecting tax on the items which a purchaser personally uses. It is the dealer's responsibility to know the nature of his customer's business so that he will know when to collect tax on items purchased for personal use.

All sales are either wholesale or retail. It is illegal for any person to sell at retail in Commerce City without first having obtained a Sales Tax License. It shall be presumed that any person not having a valid State of Colorado or Commerce City Sales and Use Tax License is the ultimate user or consumer of any property that he purchases. Any sales to such a person will be taxable as a retail sale regardless of the disposition of the property sold.

#### **C-(1) Interstate Commerce Sales - Shipments Out-of State**

The sales of tangible personal property, excepting the exemption for automotive vehicles which is governed by Section 20-5-C-(3), shall be exempted from the operation of this Code if both the following conditions exist:

- (A) The sales are to those who reside or do business outside the state; and
- (B) The articles purchased are to be delivered to the purchaser outside the state by common, contract or commercial carrier who is acting as agent of the seller to affect delivery or by the conveyance of the seller or by mail provided, however, that the articles so purchased and so delivered are to be used, stored, distributed or consumed outside the City. Payment of the cost of shipment of the tangible personal property shall be presumptive proof that the payee is the agent of the payor.

**Regulation 20-5-C-(1)**

Sales involving interstate commerce are exempt only in cases where the assessment of the tax would be unconstitutional except sales of automotive vehicles are also exempt to the extent provided in Section 20-5-C-(3).

Tangible personal property located within the City at the time of sale and delivered within the City to the purchaser or his agent, is taxable, irrespective of the ultimate destination of the property sold, where the parties to the contract of sale are located, or where the contract was made or accepted, or the funds paid. Merchandise ordered for delivery in the City is not exempt even though the merchandise may be shipped from outside of the City through the vendor or directly to the purchaser.

Tangible personal property located within the City at the time of sale which is delivered to the purchaser by the vendor or by common carrier who is employed to effect delivery by the vendor at a destination and for use outside of the State is not taxable.

The vendor's sales tickets showing the name and address of the consignee, the vendor's shipping records, bills of lading, or other proof satisfactory to the Director, must be retained to substantiate any exemption allowed for sales in interstate commerce.

All sales to railroads and other common carriers doing an interstate business and to all other agencies engaged in interstate commerce, are taxable in the same manner as are sales to other firms, persons or corporations, provided such sales (1) are not purchased for immediate transportation by common carrier, acting as the agent of the vendor, for use outside the State of Colorado so as to become sales in interstate commerce, (2) are not constitutionally exempt from taxation, or (3) are not sales of automotive vehicles which are governed by the provisions of Section 20-5-C-(3).

**C-(2) Intrastate Sales - Deliveries to Non-Resident Outside City**

The sales of tangible personal property shall be exempted from the operation of this Code if both the following conditions exist:

- (A) The sales are to those who reside or do business outside the City; and
- (B) The articles purchased are to be delivered to the purchaser outside the City by common, contract or commercial carrier who is acting as agent of the seller to affect delivery by the seller or by conveyance of the seller or by mail provided, however, that the articles so purchased and so delivered is to be used, stored, distributed or consumed outside the City. Payment of the cost of shipment of the tangible personal property shall be presumptive proof that the payee is the agent of the payor.

**Regulation 20-5-C-(2)**

Any sale of tangible personal property to a purchaser residing or doing business outside of the City are exempt, provided that the delivery thereof is made to such purchaser by a carrier employed by the vendor, by the conveyance of the seller or vendor, or by mail.

When tangible personal property is located within Commerce City at the time of sale and is delivered within the City either to a purchaser or his agent, including, but not limited to, a common, contract or commercial carrier, then the sale falls within the Code and is taxable, irrespective of where the parties to the contract of sale are located, or where the contract is made or accepted, or where the purchase price is paid. Payment of the cost of shipment of the tangible personal property shall be presumptive proof that the payee is the agent of the payor.

**C-(3) Sales and Leases – Automotive Vehicles to Non-residents and Certain Residents**

- (A) No City Sales or Use Tax shall be assessed or charged or payable with respect to the sales or purchase of an automotive vehicle whether new or used, if such automotive vehicle is legally licensed and registered to an address outside the City or legally registered under the International Registration Plan (IRP), or any successor agreement. If such purchased automotive vehicle meets the above criteria, the fact that it is used, operated, stored, garaged, maintained and kept within the City shall not subject such automotive vehicle to Sales or Use Tax of the City.
- (B) No City Sales or Use Tax for lease of an automotive vehicle shall be assessed or charged to or be payable by (1) non-resident, or (2) a resident of the City with dual residency within or without the City and registered outside the City, or (3) a resident with the subject leased automotive vehicle registered under the International Registration Plan (IRP), whether new or used, if such automotive vehicle is used, operated, stored, garaged, maintained or kept within the City of Commerce City 25% or less of the time. If such leased automotive vehicle is used, operated, stored, garaged, maintained or kept within the City of Commerce City in excess of 25% of the time, each lease payment thereof shall be subject to the Commerce City Sales and Use Tax on the amount of such lease payments apportioned based on the percentage of time such automotive vehicle is used, operated, stored, garaged, maintained or kept in the City of Commerce City as opposed to outside the City of Commerce City, less any credits for legal payments of sales or use taxes to other jurisdictions as otherwise provided for in this Code. The City Sales and Use Tax on leased automotive vehicles herein imposed is based on each lease payment being a separate transaction under the Code and consequently each lease payment made on a leased automotive vehicle, not otherwise exempt, is subject to imposition of the City Sales and Use Tax as herein provided.
- (C) A person with dual residency, as defined in this Code, shall not be deemed to be solely a resident of Commerce City for purposes of vehicle registration if such person has dual residency at the time of current vehicle registration and therefore shall not be legally required to register a vehicle to a Commerce City address. A person owning or leasing an automotive vehicle(s), as defined in this Code, shall qualify for dual residency (1) by legally registering an automotive vehicle to a location outside the City, and (2) conducting business operations on a regular basis inside the City of Commerce City.



- (D) The exemption herein provided shall not include construction equipment or parts, repairs and parts, mounted equipment or any other item otherwise taxable under this Code to be used for or on or attached or affixed to an automotive vehicle as here in defined subsequent to the initial sale, purchase or lease of such automotive vehicle.
- (E) The exemption herein provided shall only apply to a purchaser, lessee or user who is a registrant of the automotive vehicle and not to a lessee or user who leases or uses the automotive vehicle by agreement with a registered owner or lessor.

#### **D-(1) Bad Debts Charged Off**

The amount of gross sales which are represented by accounts not secured by conditional sale contract or chattel mortgage 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 of Colorado may be credited upon a subsequent payment of the tax herein. However, if any such accounts are hereafter collected by the taxpayer, the tax shall be paid upon the amount so collected. Provided, such credit shall not be allowed with respect to any account or item therein arising from the sale of any article under a conditional sale contract, other title retention agreements for all or part of the purchase price or from the sale of any article when the seller takes a chattel mortgage on the tangible personal property to secure all or part of the purchase price.

##### **Regulation 20-5-D-(1)**

Gross taxable sales may be reduced by any worthless accounts actually charged off as bad debts for income tax purposes during the reporting period to the extent that such accounts were previously, or are currently, included in gross taxable sales subject to the imposition of the Sales Tax.

#### **E-(1) Trade-Ins for Taxable Resale**

The amount equal to the fair market value of any exchanged or traded-in property which is to be resold thereafter in the usual course of the retailer's business, if included in the full price of an article sold.

##### **Regulation 20-5-E-(1)**

The fair market value of the property taken in trade is excluded from a taxable sale price when such traded-in property is to be resold in the usual course of the retailer's business when in the State of Colorado. There is no such allowance for trade-in value on trades or sales between unlicensed individuals. Where a trade-in of used personal property, such as furniture, automobiles, hardware, electrical appliances, farm equipment, machinery, etc., is received by a vendor upon the sale of any tangible personal property to a consumer, the tax will apply on the net sale price of such tangible personal property to the consumer, provided the article taken in trade is to be resold in the vendor's regular course of business in Colorado. Pursuant to the foregoing rule, any such transaction should be shown on the Commerce City Sales and Use Tax return as follows: (1) the full sale price shall be reported on line one, "Gross Sales and Service"; and (2) the agreed value of the article taken in trade shall be shown as a deduction from the gross taxable sales under Line (3E) in order to arrive at "Total Net Taxable Sales and Services" on Line (4).

No Sales Tax exclusion is allowable unless a traded-in property is placed in stock for resale in the retailer's regular course of business. Otherwise, he must collect the tax on the full sale price of the goods sold without any deduction for the trade-in.

#### **F-(1) Sales of Motor Fuel**

The purchase price paid or charged on commodities or motor fuel which has accrued or has been paid the motor fuel tax prescribed by the law of the State of Colorado.

##### **Regulation 20-5-F-(1)**

There shall be an exemption from the City Sales and Use Tax on the sale, use or consumption of any motor fuel, which is defined and subject to tax under the provisions of the Colorado Revised Statutes commonly known as the Motor Fuel Tax Statute. This exemption does not apply if such motor fuel tax is refundable or refunded as in the case of use by farmers or other non-highway consumers.

The City Sales and Use Tax shall be levied upon all fuels, if such fuels are not taxed pursuant to the Colorado Revised Statutes.

#### **F-(2) Sales of Cigarettes**

The sale or purchase of cigarettes.

##### **Regulation 20-5-F-(2)**

The sale of cigarettes in the City of Commerce City is not subject to the Commerce City Sales and Use Tax, however, sales of cigars and tobacco products, other than cigarettes, are taxable under the Code.

#### **G-(1) Sales to the Federal Government, the State and its Subdivisions**

The purchase price paid or charged on direct sales to, and direct purchases by the United States Government; to the State of Colorado, its departments or institutions, and the political subdivisions thereof, including Commerce City, in their governmental functions and activities only.

##### **Regulation 20-5-G-(1)**

- (1) Only the below named organizations in this Regulation Subsection (1)-(a), (b), (c) and (d) "The United States Government" and "The State of Colorado, its Departments, Institutions, and Subdivisions" are immune and exempted from the imposition of the City Sales and Use Taxes.

All other organizations, who purport to perform governmental functions but who are not empowered to levy taxes by the State of Colorado, must qualify for exemption under this Code as set forth in Code Subsection 20-5-G-(2) "Sales to Exempt Institutions and Quasi-Governmental Organizations" exemption rules and regulations and these organizations may not purchase or use tangible personal property in the City tax-free unless they do so qualify. In the absence of such qualification, such organizations will be assessed the City tax.

For the purpose of this Subsection, the term:

- (a) "United States Government and its Departments" shall mean any constitutional branches of the Federal Government and their constituent departments, offices, bureaus, boards and commissions

established or confirmed by Congressional action, and all components of the armed forces of the United States.

- (b) “State of Colorado... Departments” shall mean the State Department of Agriculture, Auditing, Banking, Civil Air Patrol, Education, Employment, Executive, Game, Fish and Parks, Highways, Institutions, Insurance, Judiciary, Law, Public Health, Public Welfare, Rehabilitation, Revenue, Savings and Loan, State, State Patrol, Treasury, and Veterans Affairs.
  - (c) “State of Colorado... Institutions” shall mean the state children’s home, state hospital, community mental health clinics, state reformatories, state penitentiary, University of Colorado, Colorado State University, Colorado State College, School of Mines, and Colorado School for Deaf and Blind.
  - (d) “State of Colorado... political subdivisions” shall mean any county or city and county, city or town, school district or junior college district, local improvement and special district, special district, or any other independent local entity having authority under the general laws of the State of Colorado to levy taxes or impose assessments such as fire, irrigation, drainage or conservancy.
- (2) Purchases by the United States Government and its Departments, the State of Colorado and its Departments or Institutions and political subdivisions, and Commerce City are considered immune from the operation of the City Sales and Use Tax on their direct purchases of tangible personal property or services for use in their governmental, as distinguished from proprietary, capacities only; provided that, and only when, such purchases are supported by requisition on official government purchase orders and paid for directly to the seller by draft or warrant drawn on the funds of that governmental entity, will the vendor be relieved from assessing the tax. This immunity will extend to no other entity nor under any other set of circumstances except as set out above. For example:
- (a) Sales to officers or employees of such government entities for their personal use are taxable.
  - (b) Purchases by students, faculty, employees and staff of schools and school districts, colleges and universities, for their personal use, are taxable. This would include the sale of such items as class rings, yearbooks and Christmas cards, and the rental of caps and gowns. The schools, colleges or universities must assess and collect a tax on items such as uniforms, art and shop materials, book replacement, towels, food service to faculty, staff, pupils and employees, and like items including meeting and other room accommodations and banquets catered and served by them for which a charge is made.
  - (c) In the case of a contractor performing a construction contract for the federal government or for any other governmental entity, the contractor is considered to be the user of the materials he purchases and the tax applies to him.
  - (d) All sales on federal areas are taxable if the transaction does not involve an exempt federal instrumentality. Private concessionaires shall collect the tax on all sales to military personnel, federal employees and other persons who are not exempt. Commissaries, post exchanges, and all other exempt instrumentalities are liable for the tax on sales made to persons who are not authorized by federal regulations to purchase therefrom. Use tax shall always apply on purchases not subjected to the sales tax on their purchase, but which are used, stored, distributed or consumed in the City.
  - (e) All Federal or state chartered banks, including national, state and industrial banks, on all of their purchases not for resale, and on all of their sales are taxable.
- (3) Any sales at retail, i.e., to the ultimate consumer, of taxable tangible personal property requires the vendor to license with Commerce City to collect and remit the City Sales and Use Tax whether that

“vendor” is a governmental or any other entity whatsoever, public, or private, to the same degree and with the same liability as any other City licensed vendor.

The tangible personal property so vended may include, but not be limited to, food or meals, gas and electric services, telecommunication services, rooms or other accommodations whether sold separately or in any degree or combination of “combined service”, books, pamphlets, photocopies, or other reproduced materials, computer usage time rentals, supporting equipment rentals, and the taxable tangible property vended along with the computer service, used or new office furniture, fixtures, or other equipment, etc.

## **G-(2) Sales to Exempt Institutions and Quasi-Governmental Organizations**

The purchase price paid or charged on direct sales to and direct purchases by Exempt Institutions and Quasi-Governmental corporations in the conduct of their regular capacities only.

### **Regulation 20-5-G-(2)**

- (1) No vendor may sell to any Exempt Institution or Quasi-Governmental organization tax free unless the Exempt Institution or Quasi-Governmental organization meets the requirements of an Exempt Institution as defined in this Code or is in fact a Quasi-Governmental organization as determined by the Department of Finance.
- (2) This section has been left incomplete intentionally for future expansion of authorized deductions.
- (3) Sales to ministers, priests, rabbis or other employees, staff members, faculty or students of Exempt Institutions for their personal use are taxable.
- (4) Exempt Institutions and Quasi-Governmental organizations are required to pay the use tax on all of their purchases for resale of tangible personal property on which they do not charge the sales tax on subsequent resales except on such resales that are otherwise exempt pursuant to this Code.
- (5) Unless otherwise exempt as an Exempt Institution or Quasi-Governmental organization pursuant to this Code, sales to or sales by non-profit organizations or associations are taxable to the full extent of the purchase price paid or charged.
- (6) Hospitals, nursing homes and educational institutions are subject to the use tax on all of their purchases of tangible personal property that are not resold, or if resold the tax is not charged, unless such institutions qualify as Exempt Institutions as defined in this Code.

## **H-(1) Returned Goods**

The amount equal to the sale price of property returned by the purchaser when the full sale price including the tax levied is refunded, either in cash or by credit.

### **Regulation 20-5-H-(1)**

Gross taxable sales may be reduced by the sale price of any property returned during the reporting period, where such sales price was previously or currently included in gross taxable sales, but only when the full sale price, including the tax, is refunded either by cash or credit to the customer.

## **H-(2) Discounts and Allowances**

The amount of discount from the original selling price if such discount or decrease in purchase price and the corresponding decrease in Sales Tax due is actually passed on to the consumer. An anticipated cash discount to be allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining gross taxable sales on any vendor's return prior to the date when the customer actually receives the discount. Any adjustments in sale price such as allowable discounts, rebates, and credits cannot be anticipated and the tax must be based upon the original price unless such adjustments have actually been made prior to the filing of the return wherein such sale is reported. Provided, if the price upon which the tax was computed and paid to the City by the vendor is subsequently readjusted, prior to the payment of the tax by the purchaser, a proper credit may be taken against the tax due on the next subsequent return.

#### **Regulation 20-5-H-(2)**

Any taxable retail sale whereby, by the terms of the sale, the full selling price is not to be paid within sixty (60) calendar days from the date of the sale may, at the option of vendor, be included in the gross taxable sales of the period during which the sale was made, or the periods during which the collections were received.

Any adjustments in the sale price such as allowable discounts, rebates and credits cannot be anticipated and the tax must be based on the original price unless such adjustments have actually been made prior to the filing of the return wherein such sale is reported. However, if the price upon which the tax was computed and paid to the City by the vendor is subsequently readjusted, prior to payment of the tax by the purchaser, a proper credit may be taken against the tax due on the next subsequent return.

No credit for discount will be allowed to a vendor unless the decrease in Sales Tax is actually passed on to the consumer. A cash discount actually given for a payment on or before a given date is an allowable adjustment to the selling price in determining gross taxable sales.

If any vendor makes an overpayment of the tax, or is entitled to a credit on his tax payments on account of mistake, errors or canceled sales, credit for the amount of overpayment due from the City may be taken on the subsequent return and filed within a reasonable time thereafter, unless such person is no longer engaged in business, in which event he should apply for a refund. (See City Sales Tax Return line 14-B.)

When any article sold is returned and the sale rescinded in the same tax period, no Sales Tax is due on the transaction.

### **I-(1) Groceries**

The sale, use, storage or consumption of food and food products which are for human home consumption unless sold for immediate consumption. (See specific Industry Regulation Section.)

### **J-(1) Medical Supplies and Therapeutic Devices**

The sale or purchase of medical supplies and therapeutic devices for human consumption only. Prescription drugs for animals are not exempt. The sale or purchase of medical marijuana is not exempt.

#### **Regulation 20-5-J-(1)**

- (1) The sale and purchase of prescription drugs for human consumption are exempted from the imposition of the Sales and Use Tax. This is to be interpreted to mean the end sale; that is, between the pharmacist (vendor) and the patient when prescribed by prescription of a physician or when purchased by a legally qualified member of the healing arts for use as part of patients treatment is exempt. Physicians, surgeons, hospitals, clinics, dentist, and veterinarians are the consumers of the various items of tangible personal property which they use in the rendition of their professional services, and as such, are required to pay the tax to the vendor on all purchases of tools, equipment and other medical supplies other than prescription drugs. Because medical marijuana is not dispensed or required to be dispensed in accordance with a prescription, the sale or purchase of medical marijuana is not exempt.
- (2) The sale and purchase of prosthetic devices are exempted from the imposition of the Sales and Use Tax.
- (3) Physicians, surgeons, dentists, veterinarians and other licensed practitioners of the healing arts, and hospitals, clinics and the like, shall pay the tax on the sale price of their purchases of any equipment, instruments, furniture, fixtures and supplies used or consumed in the ordinary and usual course of the business or practices.
- (4) The list of exempted drugs and prosthetic devices cannot be increased by implication or similarity. If there is any doubt as to the taxability on the sale or purchase of any particular item, the taxpayer should exercise the option provided for under Regulation 20-1-2 herein and inquire as to the exempt status of such item. In all cases, the burden of proof is upon the taxpayer to establish that a sale or purchase is tax exempt.
- (5) [If a device, appliance or related accessory has a retail value of more than one hundred dollars, it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a tax-exempt "Therapeutic Device" for purposes of this Code.](#)

### **K-(1) Other Deductions - Monthly Rental of Rooms**

The sales and purchases of commodities and services under the provisions of Subsection 20-4-5 hereof to any occupant who is a permanent resident of any hotel, apartment-hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, or any other place and who enters into or has entered into a written agreement for occupancy of a room or rooms or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year. This exemption shall not apply to the sale or sales of any goods, services or commodities other than the furnishing of rooms and accommodations, unless such goods, services or commodities are otherwise exempt from the tax as provided herein.

#### **Regulation 20-5-K-(1)**

Rooms or accommodations permanently occupied and which occupancy is secured by a written agreement are exempt from the tax. "Permanently occupied" is defined as being a period of thirty (30) or more consecutive days. A written agreement includes a hotel or motel registration or a rental receipt.

Accommodations include rentals of banquet rooms, meeting rooms, display rooms, etc., especially set forth herein.

All rentals or leases of accommodations and rooms in excess of thirty (30) days are nonetheless subject to the collection of the Sales and Use Tax on the tangible personal property provided, in the sale of the room and accommodation rental. In the absence of a separate statement or breakdown of the rentals of rooms or

accommodations from the rental or lease of the tangible personal property, the Director shall make such breakdown upon any available evidence and assess the tax accordingly.

Any lease or rental of rooms and accommodations for less than thirty (30) days are subject to the Sales and Use Tax regardless of whether they are paid for by draft or warrant on governmental or “exempt institution” funds. This rule also extends to any other taxable services such as food and meals furnished with the room or accommodation.

## **K-(2) Other Deductions - Finance Charges**

The amount paid by any purchaser as, or in the nature of, interest or finance charges on account of credit extended in connection with the sale of any tangible personal property if the interest or finance charges are separately stated from the consideration received for the tangible personal property transferred in the retail sale, and if included in report of gross sales and services are deductible therefrom.

## **K-(3) Other Deductions - Newspapers**

The amount paid or charged for newspapers as legally defined in this Code.

### **Regulation 20-5-K-(3)**

Only newspapers published on a daily through weekly basis and admitted to the United States Mails as Second Class Matter under the provisions of the Federal Act of March 3, 1879, or any amendments thereof are exempt from the imposition of the Commerce City Sales or Use Tax. (See C.R.S. 109-1-2 reprinted below):

“Every newspaper printed and published daily, or daily except Sundays and legal holidays, or which shall be printed and published on each of any five (5) days in every week excepting legal holidays and including or excluding Sundays, shall be considered and held to be a daily newspaper; every newspaper printed and published at regular intervals three (3) times each week shall be considered and held to be a tri-weekly newspaper; every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semi-weekly newspaper; and every newspaper printed and published at regular intervals once each week shall be considered and held to be a weekly newspaper.” (See Subsection 109-1-2, Colorado Revised Statutes, 1963, as amended.)

This exemption on sale of newspapers may not be extended to include taxable publications following: Magazines, and magazines included in newspapers usually appearing on Sundays, Trade Publications or Journals, Credit Bulletins, Advertising Pamphlets, and advertising pamphlets and Circulars in newspapers, Circulars, Directories, Maps, Racing Programs, Reprints, Newspaper Clipping and Mailing Service or Listing, Publications that include an Updating or Revision Service, Books and Pocket Editions of Books or other Newspapers not otherwise qualifying under the first paragraph of Regulation 20-5-K-(3) above **are all taxable**.

The tax will be collected and remitted on both “over the counter” sales in this City, and on sale of subscriptions to City residents made by any salesman, agent, independent contractor or any other person securing such order for subscription in this State or by any other company or person maintaining any representatives, offices or owning any property in this State, no matter the method of sale and how delivery is to be made to the customer in this City, nor no matter that such publication is shipped or mailed and delivered in the City from outside the City or State.

No matter that the magazines, etc., in the third paragraph under Regulation 20-5-K-(3) above are admitted in the United States Mails as Second Class Matter, they are not exempt from the imposition of the Commerce City Sales and Use Tax.

Any and all other printed matter of whatsoever nature used or consumed or sold in Commerce City is taxable and if given free of charge to the ultimate consumer, then it is taxable to the distributee and the printer is required to collect and remit the tax. In case the printer is not licensed, the distributee is required to remit the tax directly to the City. In case the distributee is not licensed with, or located within, the City of Commerce City, then the fair market value of such gifts are taxable to the recipient. Vendors must collect the tax on all sales to publishers of equipment or materials, except on the sales of newsprint and printer's ink which are expressly exempt. (Refer to Code Subsection Regulation 20-5-B-(3).)

#### **K-(4) Other Deductions - Cattle, Sheep, etc.**

The sale or purchase of neat cattle, sheep, lambs, swine and goats and purchases of mares and stallions for breeding purposes; and all farm auction close-out sales.

##### **Regulation 20-5-K-(4)**

The sale or purchase of neat cattle, sheep, lambs, swine and goats are exempt from the tax. All sales or purchases of mares and stallions for breeding purposes only are exempt.

Sales of insecticides, chemicals used for destroying weeds, pests, or insects, medicines, veterinary supplies, machinery, equipment, and general supplies used by agricultural producers are taxable.

#### **K-(5) Other Deductions - Sales to Contractors Who Have Prepaid the Tax**

The sales to and purchases by contractors of building materials only for installation, use or consumption on job sites or building construction addresses, on which a City Building Permit has been issued, provided that:

- (A) The building materials included items in determining the valuation of the construction for purposes of issuance of the City Building Permit.
- (B) The vendor records on the invoice of sale the job site address and City Building Permit number.
- (C) The contractor has prepaid the tax directly to the City on the estimated basis based on a percentage of the building or construction valuation on the issuance of that permit.

##### **Regulation 20-5-K-(5)**

(Refer to Code Subsection Regulation 20-6-5 and the Specific Industry Section for full details in regard to proper payment of the tax by contractors.)

#### **K-(6) Other Deductions - Livestock Feed, Seeds for Food Product, Orchard Trees**



The sale or purchase of feed for livestock or poultry, all sales and purchases of seeds for food product and all sales and purchases of orchard trees.

**L. Payment of Commerce City Sales Tax - No Commerce City Use Tax Due**

The use, storage, distribution or consumption in the City of tangible personal property upon the sale of which the City of Commerce City Retail Sales Tax of four and one-half percent (4.5%) has been imposed, collected, and remitted is exempt from the levy of the Commerce City Use Tax.

**Regulation 20-5-L**

The Use Tax shall not apply to the storage, use or consumption of tangible personal property which has been subject to the collection of the Commerce City Sales Tax upon its purchase and which tax has been paid and has not or is not subject to refund.

This exemption shall not apply to any case where the Sales Tax should have been imposed but was not.

The obligation for the payment of the tax is upon the consumer to pay the tax to the vendor licensed and authorized to collect the tax or directly to the City, and upon the vendor to license, collect and remit the tax whether the tax is called a "sales" tax or a "use" tax.

Whereas any sale and purchase of tangible personal property between relatives is subject to the tax, any gift or other transfer of tangible personal property, where there is no consideration given on the part of the recipient, shall be exempt from the imposition of the Use Tax but only when such gift or transfer is made between or among husband and wife, parent(s) and child(ren) and grandparent(s) and grandchild(ren). Gifts or other transfers of tangible personal property made between or among others are subject to the Use Tax based upon the fair market value of the gift.

**M. Payment of Other Colorado Municipality or County Tax - No Commerce City Use Tax Due**

The use, storage, distribution or consumption in the City of tangible personal property and upon the sale of which a retail sales tax at a rate equal to or greater than four and one-half percent (4.5%) has been imposed, collected and remitted to another municipal corporation or county is exempt from the levy of Commerce City Use Tax. If the rate of retail sales tax paid to such other municipal corporation or county is less than four and one-half percent (4.5%), the net difference between the tax due under this Code and the tax computed at the rate of such other retail sales tax shall be computed and shall be paid to the Director of Finance. This exemption shall be denied if a tax paid another municipality corporation or county was not legally due under the laws of such municipal corporation or county, or the laws of such other municipal corporation or county are not compatible or are not reciprocal with those of Commerce City as to specific taxation and exemption as applied to the transaction in question. This exemption shall also be denied for subsequent transactions within the City including, but not limited to, rentals, leases and uses of tangible personal property within the City.

**N. Payment of Sales Tax to Other States - No Commerce City Use Tax Due**

The use, storage, distribution or consumption in the City of tangible personal property and upon the sale of which any other state or any other state in combination with any subdivision thereof has imposed and collected a retail sales tax at a rate equal to or greater than the total rate paid the State of Colorado, its political subdivisions and the City of Commerce City is exempt from the levy of Commerce City Use Tax. If the rate of retail sales tax paid to such other state and/or its political subdivisions thereof is less than the total tax rate of the State of Colorado and the City of Commerce City, then the Commerce City Use Tax shall be due on the net difference between the tax paid less the amount of the total tax of the State of Colorado. In no instance will the Commerce City tax credit nor charge exceed four and one-half percent (4.5%).

This exemption will be denied if a tax paid another state and/or its subdivisions thereof was not legally due under the laws of such other state and its subdivisions, or the laws of such other state and/or its subdivisions are not compatible with or reciprocal to those of the City of Commerce City as to specific taxation and exemption as applied to the transaction in question. This exemption shall also be denied for subsequent transactions within the City of Commerce City including, but not limited to, rentals, leases and uses of tangible personal property.

#### **Regulation 20-5-N**

Each purchaser liable for a Use Tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another State and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the State of Colorado, and any unused portion of the credit shall then be applied against the amount of the use tax due Commerce City.

This exemption will be denied if a tax paid another state or subdivision thereof was not legally due under the laws of such other state or subdivision thereof or such other state or subdivision thereof does not have tax laws compatible with or reciprocal to the City of Commerce City in regards to the transaction in question.

There shall be no credit given for payment of a sales or use tax, regardless of its legality, to any foreign country or its political subdivisions. When applicable, the Commerce City Use Tax shall be computed and paid on the purchase price or fair market value, whichever is lower, of the tangible personal property purchased in the foreign country.

### **O. Transient Not Liable on Prior Purchases**

The use, storage, distribution or consumption while temporarily within this City of tangible personal property brought into the City by a non-resident thereof for his own personal use is exempt hereunder.

#### **Regulation 20-5-O**

The use, storage, distribution or consumption of tangible personal property brought into the City by a non-resident, while temporarily within the City, for his own personal use is exempt from the imposition of the Use Tax.

This exemption does not apply to the storage, use, distribution or consumption of tangible personal property brought into the City by a non-resident to be used in the course or conduct of a business in the City.

This Subsection applies only to an individual and only to such individual's personal use of the tangible personal property brought into the City.

**P. Purchases Prior to Residency in City - Not Taxable**

The use, storage, distribution or consumption of tangible personal property of a resident if such personal property was purchased and used for a substantial length of time and primary purpose for which it was acquired prior to becoming a resident of the City is exempt hereunder.

**Regulation 20-5-P**

Imposition of the Commerce City Use Tax falls on any property purchased or used by a resident for any use, storage, distribution or consumption in the City without payment of any sales or use tax on such transaction provided that it is not otherwise exempt under the Code. However, there is no tax liability to a resident when any tangible personal property is purchased and used for its bona fide purpose more than three (3) years outside of the City prior to the taxpayer becoming a resident of the City.

**Q. Non-Resident Not Liable for Auto Use Tax on Use in City**

The use or storage in the City automotive vehicles is exempt hereunder if:

- (A) The owner is or was, at the time of purchase, a non-resident of Commerce City; and
- (B) He purchased the vehicle outside of this City for use outside of this City, and actually so used it for a substantial and primary purpose for which it was acquired; and
- (C) He registered, titled and licensed said motor vehicle outside of Commerce City.

**R. Constitutional Preclusion from Commerce City Sales and Use Tax**

All the sales, uses and other transactions which the City is prohibited from taxing under the Constitution and laws of the United States, or under the Constitution of the State of Colorado are exempt hereunder.

**Regulation 20-5-R**

All sales, purchases and uses which Commerce City, as a home-rule municipality, is prohibited from taxing under the Constitution and laws of the United States or under the Constitution of the State of Colorado are exempt.

**S. Purchase Price Shall Not Include Other Direct Taxes**

The Commerce City Sales and Use Tax shall not apply to any direct tax imposed by this Code, or by the Federal Government, or by the State of Colorado.

**T. Use of Construction Equipment - Restriction on Use Tax**

Construction equipment which is located within the boundaries of the City of Commerce City for a period of thirty (30) consecutive days or less shall be subjected to the Use Tax of the City in an amount which does not exceed the amount calculated as follows: The purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator which is twelve (12); and the result shall be multiplied by four and one-half percent (4.5%) to determine the amount of Use Tax payable to the City. Provided however, in order for a taxpayer to avail himself of this exemption, the taxpayer must comply with the procedure described in Section 29-2-109(4) of the Colorado Revised Statutes and if he fails to do so, the exemption herein provided for shall be deemed waived by the taxpayer.

**Section 20-6    TAXPAYER (VENDOR AND CONSUMER) LIABILITY - LICENSES -  
TAX REPORTS - SPECIAL ACCOUNTING - FORM OF LICENSE AND  
REPORTS**

**6-1    Exemption - Burden of Proof**

The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying the tax upon any goods sold or purchased, paying the same to the Director of Finance, or from making such returns, shall be on the vendor, retailer, consumer, or purchaser under such reasonable requirements of proof as the City Manager may prescribe.

**6-2    City Manager May Require Reports, Records**

The City Manager may require any person, by regulation or notice served on such person, to make such return, render such statement or keep and furnish such records, or make such information reports as the City Manager may deem sufficient to show whether or not such person is liable under this Act for payment or collection of the tax imposed herein.

**6-3    Vendor Responsibility for Collection and Remittance of Tax and Licensing**

**(A) Vendor Responsibility for Collection of Tax**

Every retailer or vendor engaged in business and selling at retail as the same are defined in this Code shall be liable and responsible for the payment of an amount equivalent to four and one-half percent (4.5%) of all sales made by him of commodities or services as specified in Section 20-4 of this Code.

**(B) Vendor Responsibility for Remittance of Tax**

Every retailer or vendor engaged in business and selling at retail as the same are defined in this Code shall file a return as prescribed herein with the Director of Finance on or before the twentieth (20th) day of the month for the preceding month or months under report and remit an amount equivalent to said four and one-half percent (4.5%) of such sales and also any excessive tax collections over said four and one-half percent (4.5%) as provided in Subsection 20-6-11, less the vendor's fee to cover the retailer's expense of collection and remittance of the tax. The retailer shall add the tax as a separate and distinct item and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts.

**Regulation 20-6-3 (A) and (B)**

- (1) The vendor of tangible personal property shall collect the Sales Tax on the purchase price paid for commodities and services specified in the Code and account for and remit the full amount of the tax. He is liable and responsible for the payment of an amount equivalent to four and one-half percent (4.5%) of the total amount received from taxable sales made in each return period.

Excess collections, if any, within the return period, shall be included in the total amount of the Sales Tax for which he is required to account. In computing the amount of tax he is required to remit, the

vendor will multiply net taxable sales, which will include the cost of the merchandise the vendor withdrew from stock for his own business or personal use, by four and one-half percent (4.5%) and compute the difference between this sum and the tax actually collected. If the amount collected from all such sales is more than four and one-half percent (4.5%) of the net taxable sales, the vendor will add the difference as excess tax prorated between the City and State. He is then permitted to deduct the vendor's fee from his tax liability to cover his cost of collecting the tax.

Purchasers or consumers may not deduct the vendor's fee on their Use Tax returns, and vendor's may not deduct the vendor's fee unless their returns are timely filed.

The vendor shall complete a return upon his gross sales of tangible personal property during the preceding month and show exempted and non-taxable sales as permitted within the Code. Return forms are furnished by the Department and call for specific information. The forms must be filled out in detail and separate sheets attached whenever necessary to show all the pertinent facts.

Every vendor must make monthly returns prior to the twentieth (20th) day of each month on the forms provided by the Department, unless permission has been obtained to make quarterly or annual returns. The return must have a United States Postal Service postmark dated no later than the twentieth (20<sup>th</sup>) day of the month to be considered timely filed. Metered postmarks will not be accepted as proof the return was timely filed.

The report, together with remittance, must be filed with the Department of Finance on or before the due date. Remittance must be by check, draft or money order and made payable to the City. Do not send postage stamps. Cash remittance should be by registered mail or personal messenger.

- (2) The Code gives the Director authority to grant extensions of time for filing Sales Tax returns but extensions will not be granted unless the taxpayer can show that filing on or before the date would result in an extreme hardship.

(3) If any vendor can establish that the amount of taxable sales made to Commerce City residents are infrequent and relatively small in proportion to his total volume of business and, therefore, create an undue bookkeeping burden, and if the vendor is willing to submit regular audit reports as to the frequency of sales to Commerce City residents in comparison to all of his sales and pay tax accordingly on this estimated basis, the Director shall be authorized, in his discretion, to accept such payment basis. The Director of Finance is authorized, at his discretion and upon the submission of sufficiently audited reports, to accept such or similar arrangement for payment of the Commerce City Sales and Use Tax that may be due from any person where there is demonstrated that it is economically infeasible to report the tax due on an "actual" item by item basis.

## **(C) Licenses for Vendors**

It shall be unlawful for any person to engage in the business of selling at retail, as the same is defined in this Code, tangible personal property and services subject to the tax imposed by this Code, without first having obtained a license therefor, which license shall be granted and issued by the Director of Finance, with or without fee as determined and set by resolution of the City and shall be in force and effect until the business is sold, discontinued or relocated.

### **Regulation 20-6-3-(C)**

- (1) Every person, retailer or lessor who comes within the definition of a retailer, as defined in this Code, shall obtain a sales tax license in order to do business in the City of Commerce City.

- (2) A City Sales and Use Tax license is required for all forms of retail selling whether through stores, from private residence, by house to house canvass, by peddlers, by truckers, by vending machines, or in any other manner whatsoever.

Cooperative associations, clubs, chambers of commerce, lodges, churches, and similar organizations must be licensed and collect and remit the tax if regularly engaged in selling at retail, even though they may be non-profit organizations and may sell only to their own members.

- (3) Leased departments are separate and distinct stores just as if the various activities conducted in such departments were conducted in separate and distinct buildings. The fact that the various departments happen to be in one building or on one floor of a building does not alter the fact that ownership and control of merchandise is different in each leased department. Where a store has leased certain of its departments to persons for the sale of tangible personal property, each such leased department shall obtain a Sales Tax license, collect the tax and remit same on a proper return.

The lessee may keep his own books and make his own collections on account of sales. If the store leasing such departments keeps the books for the leased departments and makes collections on account of their sales, the store shall make separate accountings for such departments and remit the taxes due. The lessee is not relieved of his liability in case the store fails to make the proper returns or fails to remit the taxes to the Director.

- (4) Doing business without a license is a misdemeanor punishable by fine or imprisonment or both.

**6-4** This section has been left incomplete intentionally for future use.

#### **6-5 Contractors - or Owners or Lessees of Realty - Methods of Paying**

Every contractor who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling or other structure, or improvement to real property including all work performed on Federal, State, County, City, exempt institutions and private construction job sites in this City and who shall purchase lumber, fixtures, or any other building materials and supplies used for such purposes and uses equipment for such purposes and every owner, or lessee of realty situate in the City and of improvements and structures located upon realty, situate in the City, upon which any article or articles of tangible personal property acquired from sources within or without the City, are attached or affixed, or any equipment used for construction thereon or improvements thereto, and which the contractor, owner or lessee has not paid the tax imposed by this Code thereon, to a vendor required or authorized to collect the same, shall pay the Commerce City Sales and Use Tax in either of two ways, but payment by either method shall not constitute final satisfaction of the tax liability if an audit establishes that a different tax liability exists:

##### **(A) Payment on Estimated Basis**

- (1) By paying the tax on the "Estimated Percentage Basis" based on a percentage of the total valuation of construction contract and paid, either through the owner, lessee or the general contractor, or separately, if he is a subcontractor electing to do so, at the time a building permit is issued.

- (2) In the absence of agreement to the contrary between the taxpayer and the Director of Finance, the percentage of such valuation on which the tax is based for purposes of payment on the “Estimated Percentage Basis” shall be sixty percent (60%) of the total valuation.

### **(B) Payment on Actual Basis**

Contractors, owners or lessees not electing the first alternative as set forth under subparagraph (A) above, must license with the City of Commerce City and monthly make reports and returns remitting the tax and showing all information as prescribed on Commerce City Consumer Use Tax Returns.

## **6-6 Commerce City Business Consumer - Method of Payment**

Every person who operates or maintains, in this City, a business as defined in Subsection 20-3-5 hereof, and who purchases, leases or rents tangible personal property and taxable services for use, storage, distribution or consumption in the City in connection with the said business, from sources within or without the City and taxable hereunder, and who has not paid the Commerce City Sales and Use Tax, imposed herein, to a vendor required or authorized to collect the same shall, under the authority vested in the City Manager in Subsection 20-6-2 of this Code and throughout this Code, be required to secure a Commerce City Consumer Use Tax License through application procedures set forth herein and monthly, or on a reporting basis agreed to by the City Manager, but no less than annually on a calendar year basis, make a return and pay the tax due, if any, to the City on or before the twentieth (20th) day of the month following the preceding month or months under report.

Subsection 20-6-17-C shall govern as to frequency of the filing of these mandatory reports.

### **Regulation 20-6-6**

- (1) A business enterprise located within Commerce City, even though not engaged in taxable retail sales, but who leases, rents or purchases, tax-free of the Sales Tax, tangible personal property to be used, stored or consumed in the City must report and pay Use Tax on the purchase price of the item or items acquired. Use Tax must be reported as above.
- (2) Regardless that a business enterprise located within Commerce City, makes the claim that they do not engage in purchases or sales taxable under the Commerce City Sales and Use Tax Code, that same Commerce City business (as defined herein) must still in any event apply for and secure a Commerce City Sales and Use Tax License and must at least annually on a calendar year basis, submit a properly completed Commerce City Tax return, as prescribed, showing Tax Liability or no Tax Liability as the case may be.
- (3) Failure to comply as in (1) and (2) above is a violation of the Commerce City Sales and Use Tax Code.

## **6-7 New Business Purchases - Sellers and Purchasers**

### **(A) Acquisition of Business**

The Commerce City Tax shall be remitted on the price paid for tangible personal property which is acquired with the purchase of a business. The tax shall be based on the price paid for such



tangible personal property as a part of the total transaction at the time of sale or transfer, provided the valuation is as great or greater than the fair market value of such tangible personal property. Where the transfer of ownership is a lump sum transaction, the Tax shall be paid on the book value set up by the purchaser for income tax depreciation purposes, or fair market value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser.

### **(B) Purchasers Liable for Prior Owner's Unpaid Tax**

Purchasers of a business are liable for any unpaid tax of a predecessor. Vendors or consumers having outstanding accounts on which sales or use tax has not been remitted must compute and pay the tax at the time of the sale.

### **(C) Agent of Seller and Seller Liable for Tax**

The taxpayer shall report such tax on the Commerce City Consumer Use Tax Return as prescribed. The seller or his agent will be held liable for Sales and Use Tax remittance on the sale of business in the event the purchaser fails to remit the tax due on the purchase.

#### **Regulation 20-6-7**

- (1) When a business is purchased outright, or taken over in return for the assumption of outstanding indebtedness owed by former owners, or repossessed, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser, or the person repossessing the property.

Vendors or consumers having outstanding accounts on which Sales or Use Tax has not been remitted must compute and pay the tax at the time of the sale. Purchasers of a business are liable for any unpaid tax of a predecessor.

- (2) The Use Tax applies only if the property was purchased at retail and not for resale. When a store, hotel, laundry or other business is purchased, the new owner must pay a Use Tax on the purchase price paid for the fixtures, furniture, supplies, equipment and all tangible personal property acquired, which is not held as a part of the inventory or stock for resale. The Sales Tax Code and rules and regulations apply in determining whether the sale was a retail sale.
- (3) Real estate companies and agents acting for themselves or for any other person are considered vendors, under this Code, and are required to license as a vendor with the City and to collect and remit the City of Commerce City's Sales and Use Tax on any tangible personal property included in any real estate transfer, on any sale or transfer of such property in this City.

(Refer to Subsections 20-6-18-(H), and 20-3-63 and as applicable to specific industry sections on "Construction and Contractors" for detailed classification of furniture, materials, fixtures, etc., for purposes of this Code.)

### **6-8 Individual Commerce City Consumer Use Tax Payment**

Every resident of the City who purchases, leases or rents tangible personal property and taxable services for use, storage, distribution or consumption in the City, from sources within or without the City, and taxable hereunder, and who has not paid the tax imposed by this Code thereon to a

vendor required or authorized to collect the same shall file a Commerce City Use Tax Return and pay the tax due to the City within thirty (30) days from the purchase, lease, or rental of such tangible personal property and taxable services.

#### **6-9 Purchasers of Automotive Vehicles**

Any resident of the City who shall purchase any automotive vehicles as defined in Subsection 20-3-4 of this Code, whether new or used, from sources within or without this City, for use within the City and who has not paid the tax imposed by this Code thereon to a vendor required or authorized to collect the same, shall immediately, and prior to registering and obtaining the license therefor, whether registered within or without the City, make a return showing such transaction to the Director and thereupon pay to him the tax applicable thereto as provided in this Code, and failure to do so shall constitute a violation of this Code. In lieu of payment to the Director, the taxpayer shall pay such tax to the Adams County Clerk at the time of registration of the motor vehicle.

#### **6-10 Tax on Credit Sales, etc.**

Whenever tangible personal property is sold, including that sold in conjunction with the sale of a business, which is taxable hereunder, under a conditional sales contract or rental purchase contract whereby the seller retains title as security for all or part of the purchase price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. The tax shall be charged, or collected and remitted by the vendor. No refund or credit shall be allowed to either party to the transaction in case of repossession.

##### **Regulation 20-6-10**

The vendor may collect cash or charge the customer's account, for the total Sales Tax due on the total sale whether such sale be made on credit, installment or conditional sale; however, the Sales Tax collected or charged on either installment or conditional sales must be remitted in full by the vendor to the Director of Finance with the first Sales Tax return following the transaction. No refund will be allowed to either party if the purchaser fails to fulfill his obligation on an installment or conditional sales contract and the merchandise involved in the transaction is repossessed. Whenever an article is repossessed and subsequently resold, then both such transactions constitute entirely new, separate, and distinct "sales" transactions, as defined upon which the Sales Tax must be computed and paid in the regular manner. On open credit sales, the vendor may elect to report and pay the tax as it is collected.

#### **6-11 Excess Collections - Failure to Remit Collections**

If any vendor shall, during any reporting period, collect as a tax an amount in excess of four and one-half percent (4.5%) of his total taxable sales, he shall remit to the City the full net amount of the tax herein imposed and also such excess. If records of City and State Sales Tax collections are kept separately, the vendor shall remit the excess of City Tax collected over and above four and one-half percent (4.5%) City Net Taxable Sales and Service. If there is no record kept of City and State Tax collections and it is not possible to determine the excess to be remitted to each, the vendor shall remit the prorated portion between the City of Commerce City and the State of Colorado. The retention by the vendor of any excess of tax collections over four and

one-half percent (4.5%) of the total taxable sales of such vendor, or the intentional failure to remit punctually to the City the full amount required to be remitted by the provisions of this Code, is hereby declared to be a violation of this Code.

#### **6-12 Unlawful for Vendor to Absorb and Pay Tax - Exception**

- (1) Except as is authorized pursuant to paragraph (2) of this section, it shall be unlawful for any taxpayer or vendor to assume or absorb the tax or any part thereof imposed by this Code or to fail to add the tax imposed by this Code to the selling price of the property sold, or to refund the tax imposed by this Code or any part thereof, and further it shall be unlawful for any taxpayer or vendor to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this code will be assumed or absorbed by the vendor or taxpayer or that it will not be added to the selling price of the property sold, or, if added, that it or any part thereof will be refunded.
- (2) If any vendor petitions the City Manager and states that the imposition of the tax or any part thereof imposed by this Code will impose an unnecessary hardship and if the type and occasion of sale so warrants, the City Manager may, in the City Manager's sole discretion, permit a vendor to assume or absorb the tax, or any part thereof imposed by this Code, and not add the same to the sale price of the property sold, so long as the vendor makes payment to the City of the tax based upon the sale price paid by the purchaser for the property sold as required by the terms and provisions of this Code.

##### **Regulation 20-6-12**

Except as is authorized pursuant to Section 20-6-12 (2) of this Code, every retailer or vendor shall collect sales tax on all taxable retail sales as an item separate and distinct from the selling price. It is a misdemeanor for a vendor, except as is authorized in this Code, to directly or indirectly assume, absorb, pay, refund, fail to add to the purchase price or hold out, advertise or state that the tax or any part thereof will be assumed, absorbed, refunded or paid by the vendor or that it will not be added to the purchase price.

#### **6-13 Special Accounting - Alcoholic Beverage Sales by the Drink**

Any retailer selling malt, vinous, or spirituous liquors by the drink may include in his sales price the tax levied under this section; provided, that no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer.

##### **Regulation 20-6-13**

- (1) Sales of fermented malt beverages, malt, vinous, or spirituous liquors by the package and by the drink are subject to the four and one-half percent (4.5%) Commerce City Sales and Use Tax. A vendor may elect to include the tax in the selling price of the drink or to add the tax to the price of the drink. Once having made the election he must continue to impose and collect the tax in the manner elected.
- (2) In the case of package sales the tax must be added to the total selling price.
- (3) Vendors dispensing liquor, wine or beer by the drink who purchase ingredients which they use in mixing the drinks are not required to pay Sales Tax on the purchase of such ingredients.

#### **6-14 Special Accounting - Combined Sales of Services and Personal Property**

Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer or purchaser consists of the supply of tangible personal property and services in connection with the maintenance or servicing of same, shall be required to pay the tax levied under this Code upon the full contract price, unless application is made to the City Manager for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The City Manager is hereby authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale which shall be subject to the tax levied pursuant to the provisions of this Code. The section shall not be construed to include the terms upon which the tax is imposed on the full purchase price as defined in Subsection 20-3-44 of this Code, nor shall it be construed as an allowance for the vendor to fail to itemize to the customer the taxable, and non-taxable portions of the bill.

##### **Regulation 20-6-14**

Additionally, on instances of sale of property with maintenance agreement thereof, no deduction for labor or service portion of that total agreement from the tax base may be made without the express written approval of the Director.

#### **6-15 Special Accounting - Use Tax Collections by Non-Resident Vendors**

Every retailer or vendor engaged in business in this City, as the same as defined herein, and making sales, even though not maintaining an office in this City, of tangible personal property or taxable services subject to the Use Tax, must, in accordance with this Code, collect and remit the Use Tax on such sales in like manner as Commerce City Retailers collect and remit the Sales Tax. Provided, that if the non-resident vendor petitions the City Manager stating that the imposition of the tax on an individual sales basis will impose an unnecessary hardship, and if the type and occasion of sale so warrants, the City Manager may accept payment of that vendor's tax liability on a regularly audited and reasonable estimated payment basis. This estimated payment will be based on the surveyed Commerce City Sales and Use Tax liability as it bears to the vendor's aggregate gross sales and service.

#### **6-16 Special Accounting - Contractor Estimated Payment Basis**

Commerce City sales and use taxes may be paid on an estimated basis based on the percentage of construction valuation, as set forth in Section 20-6-5.

##### **Regulation 20-6-16**

All construction within the City limits is taxable whether that construction is for a private individual or business, a government, any religious or charitable institution or organization, or any other type of owner. The contractor working on such construction projects is subject to the tax on all purchases of tangible personal property, which property is used, stored or consumed on those projects. He is additionally liable for tax on construction projects for equipment use, rentals, leases and purchases.

## **6-17 Tax Returns - Content, Consolidation, Reporting Periods**

### **(A) Tax Return; Content, Form, etc.**

The returns to be filed by the taxpayer, or his duly authorized agent, shall contain such information and be completed in such manner and upon such forms as the City Manager may prescribe.

### **(B) Consolidation of Returns**

A vendor doing business in two or more places or locations, whether in or without the City, and collecting taxes hereunder, may file one return covering all such places or locations, when accompanied by a supplemental report showing the gross sales and service and net taxable sales and service and taxes collected thereon for each such place or location.

### **(C) Reporting Periods**

If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his business, or other conditions, are such that in the returns aforesaid made on a calendar month basis, will impose unnecessary hardship, the City Manager may, upon request of the vendor, or licensed consumer, accept returns at such intervals as will, in his opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax; provided, however, the City Manager may by rule permit a vendor or licensed consumer whose monthly tax collected is less than fifty dollars (\$50) to make returns and pay taxes at intervals not greater than three months, or as approved by the City Manager.

#### **Regulation 20-6-17**

Approval of requests for quarterly, seasonal or annual filing periods will be granted only if, in the opinion of the Director, it will not jeopardize the collection of the tax. Permission to change the time or interval for filing of reports and payment of tax will not be granted to vendors or consumers who are delinquent in filing, nor will vendors fee or retainage be allowed to vendors who are delinquent in filing their tax returns.

Every vendor or consumer subject to report and pay Sales or Use Tax seeking the privilege of filing seasonally or annually may be required to deposit with the Department of Finance cash, bearer bonds of the United States or of the State of Colorado, or any political subdivision thereof, or corporate surety bond endorsed by a surety company licensed to do business in the State, and approved by the Director for the purpose of guaranteeing payment of the Sales or Use Tax. Such bond or deposit required as guaranty of payment of tax shall be the department's estimate of the amount required to indemnify the City against loss of tax, penalty and interest, but not less than one and one-half (1 1/2) times the average tax for a selected previous representative period. This same rule may apply to transient vendors or their representative who have no established place of business located in Commerce City.

If any vendor or consumer subject to report and pay Sales or Use Tax who has been granted permission to file reports, and pay tax on other than a monthly basis shall become delinquent, then authorization for such alternative method of reporting may be revoked by the Department of Finance at any time and immediately following notice of such revocation, the taxpayer will be required to file reports and pay tax, interest and penalties on a monthly basis for all unreported or unpaid tax in the same manner required by law and under conditions that would prevail if he had never been granted the alternate method of reporting and paying the tax.

Applications for permission to file reports and pay tax on a quarterly basis, if approved, shall take effect with the next calendar quarter which begins at least fifteen (15) days after approval.

If the vendor or consumer subject to report and pay Sales or Use Tax has an average tax liability of ten dollars (\$10) per month or less, the Director may permit reports to be filed and tax paid on an annual basis.

Application for permission to file reports and pay tax on an annual basis, if approved, shall take effect on January 1 of the next calendar year beginning at least fifteen (15) days after approval. Following the approval by the Director of an application to file on a quarterly or annual basis, the filing of reports and payment of the tax shall be due on the twentieth (20th) day of the month following the end of the approved reporting period.

If the vendor or consumer subject to report and pay Sales and Use Tax is engaged in a seasonal business where his business is not operated in the City at all during certain months of the year, he may apply on the prescribed application form for permission to file the reports and remit the tax only during the months of the year in which his business is operated.

The applicant shall state the months during which he expects to operate said business in the City, the place or places said business will be operated, and an agreement to notify the department of any change in business, equipment or facilities or of changes in locations.

## **6-18 Retailer and Consumer Licenses**

### **(A) Application - Content**

Commerce City retailer and consumer licenses shall be granted only upon application stating the name and address of the person desiring such license, the name of such business and the character thereof, the location, including the street number of such business and such other facts as may be required by the City Manager. Any person doing business as a wholesaler shall obtain a retailer's license if any sales are made at retail as defined herein.

#### **Regulation 20-6-18**

Every person who comes within the definition of a retailer must have in his possession a valid Commerce City Sales and Use Tax license.

Anyone operating a roadside stand or selling "door to door" or from other than an established store must have a license. Because of the transient character of persons who sell at retail from other than a store regularly established and carrying a stock of goods on hand at all times from which sales may be made at retail, such persons shall be required, as a condition of their obtaining a license under the Code, to post a bond satisfactory to the Director and payable to Commerce city, conditioned upon their full compliance with the provisions of the Code and their accounting to the Director for all monies due thereunder.

Anyone who repeatedly advertises, solicits or offers tangible personal property for sale must have a Sales Tax license and collect the tax due on such sales even though they are few and infrequent.

Any person selling tangible personal property at retail in Commerce City who has never obtained a Sales Tax license, or any such person who continues to make such sales after his license has been revoked, shall be deemed guilty of a misdemeanor by the Director and, upon conviction thereof, shall be punished accordingly. (Refer to Subsection 20-6-18 (D) and (E).)

**(B) Each Retail Establishment to be Licensed**

In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required; however, consolidated tax returns may be filed for those various locations as set forth in Subsection 20-6-17 (B).

**(C) Form of License - License Non-Transferable**

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

**(D) Sale at Retail Without License**

Any person engaged in business in the City as defined in the Code, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this Code.

**(E) Revocation of License by City Manager**

The City Manager may on a reasonable notice and after full Hearing, revoke the license of any person found by the City Manager to have violated any provision of this Code. After revocation of the license, no further business, as defined herein, may be conducted within the City, and the City Attorney shall institute such legal action as may be necessary to preclude such conduct of a business.

**(F) Appeal from City Manager's Order**

Any finding and order of the City Manager revoking the license of any person shall be subject to Judicial Review in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**(G)** This section has been left incomplete intentionally for future expansion.

**(H) Sale or Transfer of Business Interest Requires New License Issuance and Applicable Use Tax Payment**

Any sale, transfer or purchase of an interest in a business enterprise by any persons, as defined, where the respective interest of the person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a retailer or other person required to be licensed under the Code, the issuance of a new license, and in all cases where any of the assets of any business are within the City, then also the payment of the Use Tax on transfer of title or possession or both of the tangible personal property taxable herein whether involving a retail establishment or any other type of business enterprise.

**Regulation 20-6-18(H)**

A sale, purchase or other transfer of any interest in a business enterprise by any person whereby the interest of the purchaser or the seller has changed in any degree as a result of the transaction, including a lease, rental, or grant of license to use tangible personal property of a separate owner, by the new owner or Lessee requires (1) the acquisition of a new license in the case of a retailer or other person required to be licensed under the Code, and (2) the payment of the Use Tax on the transfer of title and/or possession of tangible personal property, when such assets are within the City. Such "sale, purchase or other transfer of any interest in a business enterprise" shall include the formation of a partnership from a sole proprietorship; the incorporation of a sole proprietorship or a partnership, the reorganization of any partnership or other business association; and the merger, consolidation or combining of two or more corporations, partnerships, business associations, business concerns or other organizations. (Refer to Subsections 20-6-7, 20-6-8, 20-3-63 and as applicable to classification, for purposes of this Code, of furniture, fixtures and materials in specific industry regulations "Construction and Contractors.")

**6-19 Method of Payment Determined by the City Manager**

The City Manager shall have the discretion to enter into an agreement with taxpayers to allow for payment of required taxes on an installment basis when such a method would be equitable for the taxpayer and the City.



**SECTION II**

**COMMERCE CITY SALES & USE TAX CODE (20) - “ADMINISTRATION” AND  
REGULATIONS**

Reproduced in this portion of the Handbook are the Code sections and regulations dealing with the administration of the Code.

This “Administration” section of the Handbook contains the following parts:

Department of Finance Established for Administration Code .....Section 7

Addition to Tax - Penalties and Interest .....Section 8

Interest on Overpayments and Refunds .....Section 9

Refunds .....Section 10

Hearings .....Section 11

Appeals .....Section 12

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## **ARTICLE II**

### **ADMINISTRATION**

#### **Section 20-7 DEPARTMENT OF FINANCE ESTABLISHED FOR ADMINISTRATION OF CODE**

##### **7-1 Department of Finance Established**

- (A) The Department of Finance is hereby established and given responsibility for administration and implementation of this Code under the direction of the City Manager.
- (B) City Manager to Adopt Rules and Delegate Administration to Director of Finance.

The City Manager shall adopt rules and regulations for the administration of this Code and designate a Director of Finance who shall, under the direction of the City Manager, be responsible for the Department of Finance.

##### **Regulation 20-7-1**

The City of Commerce City recognizes that certain differences exist between the State of Colorado Sales and Use Tax Statute, with its accompanying rules and regulations, and the City Sales and Use Tax Ordinance, with its accompanying rules and regulations. Such differences are not inconsistent with the City's policy of non-conflict with the State statute only under those circumstances when the City's objectives and requirements are not detrimentally affected. Thus, in order to establish equity when differences occur, the City Sales and Use Tax Code with its accompanying rules and regulations shall take precedence over conflicting State provisions or procedures.

The Director of Finance may declare, at any time in his opinion required, a need for modification, revision or extension of published regulations. No regulation regarding specific applicability of tax or binding opinion shall be issued except with the written endorsement of the Director of Finance. Reliance upon any unofficial regulation or opinion, or upon regulation or administrative directive, procedure or policy of any other taxing jurisdiction shall be totally at the risk of the vendor and/or taxpayer. Delegation of authority to issue rules, regulations or binding opinions shall not be implied from any organizational structure adopted within the office of the Director nor from any general designation of position or delegation of general duties.

##### **7-2 Duties and Powers of Director**

###### **(A) Administration of Code**

In order to effectuate the purposes of this Code, the Director of Finance, under the direction of the City Manager, shall prescribe necessary forms for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed and for the proper administration and enforcement thereof, and to permit uniform methods of adding the tax, or the average equivalent thereof, to the purchase price.

The City Manager shall have power and authority to amend, or rescind such rules and regulations adopted pursuant to Subsection 20-7-1 (B), not inconsistent with the provisions of this Code.

#### **Regulation 20-7-2(A)**

The Director of Finance shall be vested with the proper administration and enforcement of the Sales and Use Tax provisions of the City Code. He may prescribe forms and formulate and promulgate rules and regulations to effectuate the purpose of the Code, including the imposition of any costs and expenses incurred and involved in the ascertainment, assessment, and collection of the taxes under Sections 20-7 and 20-13 of the Code.

The rules and regulations interpreting the law applicable to any particular year shall be effective for the same period as is the law which they interpret. Any modification or amendment to the regulations shall conform to the Code requirements as set forth herein.

The books or records required by this section shall be kept at all times available for inspection by authorized revenue agents, auditors or other employees of the Department of Finance, and shall be retained so long as the contents thereof may become material in the administration of the Commerce City Sales and Use Tax Law.

#### **(B) City Manager to Appoint Employees and Examine Returns**

The City Manager shall appoint such persons to make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. The City Manager shall determine his own organization and methods of procedure in accordance with the provisions of this Code. For the purposes of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the City Manager shall have power to examine or cause to be examined by any employee, agent, or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return. In the discretion of the City Manager or his designated employee, agent, or representative, examination of any such books, papers, records, or memoranda may be conducted for time periods that are representative of larger time periods of the taxpayer's business activities. Such examination results may be used by the City for the entire time period under audit without the need to physically examine all such books, papers, records or memoranda for the entire period of the taxpayer's business activities under audit. Examination results for such projected time periods shall presumptively establish the tax liability of the taxpayer for the entire time period of business activities under audit, subject to rebuttal by competent evidence submitted by the taxpayer. Subject to the provisions of the Code, the City Manager is authorized to appoint and prescribe the duties and powers of such officers, accountants, experts, and other persons as may be necessary in the performance of his duty. The City Manager may delegate to any such person so appointed, such power and authority as he deems reasonable and proper for the effective administration of this Code and in his discretion shall bond in a sufficient amount any person handling money under this Code.

#### **7-3 Taxpayer Must Maintain Books and Records**

##### **(A) Taxpayer's Retention of Records**

It shall be the duty of every person, firm, or corporation liable to the City of Commerce City for any tax imposed on sales, and use taxes, to keep and preserve for a period of three years such books, accounts, and records as may be necessary to determine the amount of such tax liability.

### **Regulation 20-7-3**

Every vendor is required to keep and preserve for three years all invoices or other original records of goods or merchandise purchased, suitable records of all sales made by him, and such other books, accounts and records as may be necessary to determine the amount of his liability.

Whatever original records of sales the vendor makes, such as invoices, sales slips or cash register tapes, must be retained. The Director or his agent may examine any invoices, books or records at any reasonable time.

#### **(B) Records to be Made Available to the City Manager**

All such books, accounts, and records shall be open for examination at any time by the City Manager or his duly authorized agents. In the case of a person, firm, or corporation which does not keep necessary books, accounts, and records within the City, it shall be sufficient if such person, firm or corporation produces within this City such books, accounts and records, or such information as shall be reasonably required by the City Manager, for examination by the City Manager or an agent duly authorized by him, or in lieu thereof, if said books, accounts, and records are open for inspection by an agent authorized by the City Manager at the place where such books, accounts, and records are kept.

#### **(C) Subpoena to Secure Records**

If any taxpayer shall refuse voluntarily to furnish any of the foregoing information when requested by the City Manager or his employees, agent, or representative, the City Manager, by subpoena issued under his hand, may require the attendance of the taxpayer and the production by him of any of the foregoing information in his possession, and may administer an oath to him and take his testimony. If the taxpayer fails or refuses to respond to said subpoena and give testimony, the City Manager may apply to any judge of the District Court of the State of Colorado for a citation against such taxpayer as for contempt, and said judge may cause arrest of such person, and upon hearing, said judge shall have, for the purpose of enforcing obedience to the requirements of said subpoena, power to make such order as, in his discretion, he deems consistent with the law for punishment of contempts.

#### **(D) Subpoena to Secure Evidence**

If the City Manager is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the income of the taxpayer, the City Manager may apply to any judge of the District of the State of Colorado for the issuance of subpoenas to such other persons as the City Manager believes may have knowledge in the premises, and upon making a showing satisfactory to the court, that the taxpayer cannot be found, or evades service of subpoena, or fails or refuses to produce his records or give testimony, or is unable to furnish such records or testimony, the judge shall have power, to cause the issuance of subpoenas under the seal of the Court to the persons sought to be so summoned requiring them or any of them to appear before said City Manager and give testimony relating to said taxpayer's return or income; and in case of said persons so served with subpoena shall fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

## **7-4     Tax Reports and Returns - Preservation**

### **(A) City's Preservation of Records**

All reports and returns of taxes received by the Department of Finance covered by this Code shall be preserved for three years and thereafter until the City Manager orders them to be destroyed.

### **(B) Confidential Nature of Returns**

Except in accordance with judicial order or as otherwise provided by law, the City Manager, his agents, clerks and employees shall not divulge, or make known in any way information disclosed in any documents, report, or return filed in connection with any of the taxes covered by this Code. The officials charged with the custody of such documents, reports, and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of any such taxing statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the Court may require the production of, and may admit in evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.

#### **Regulation 20-7-4-(B)**

Every sales and use tax return and all information therein contained together with the correspondence, papers, affidavits, assessments, protest, and hearing thereon are secret and confidential and no information relating thereto can be disclosed except in accord with this section of the code.

### **(C) Taxpayer Records**

Nothing in this section contained shall be construed to prohibit the delivery to a person or his duly authorized representative of a copy of any return or report filed in connection with his tax, and such copies may be certified by the City Manager or his agent or representative and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.

### **(D) Publication of Statistics - Returns Available to City Attorney**

Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection of returns by the City Attorney or other legal representatives of the City.

### **(E) Records Available to Authorized Parties**

Notwithstanding the provisions of this section, the City Manager in his discretion may furnish to the taxing officials of any other state and its political subdivisions, to the State of Colorado and its political subdivisions, and to the United States any information contained in tax returns and related schedules and documents filed pursuant to this Code, or in the report of an audit or investigation made with respect thereto provided that said jurisdiction enters into an agreement

with the City Manager to grant similar privileges to the City, and provided further, that such information is to be used only for tax purposes.

## **7-5 Employees' Restrictions**

It shall be unlawful for any officer or employee of the City engaged in any administration which is governed by this Code, to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm, or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the City of Commerce City, by the State of Colorado, by any other state, or by the United States Government, or to accept any employment for the purpose of advising, preparing materials or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax, or part thereof, that has been assessed by any city of the State of Colorado, by the State of Colorado, any other state, or its political subdivisions, or by the United States Government.

### **Regulation 20-7-5**

Except as provided in Subsections 20-7-4 (C), (D) and (E) of this Code, any person who violates any provisions of Subsection 20-7-4 (B) of this Code shall be guilty of a violation of this Code and upon conviction shall be punished as prescribed herein; and if the person is an officer or employee of the City, he shall be dismissed from office.

## **7-6 Coordinated Audit**

- (a) Any taxpayer licensed in this City pursuant to 20-6-3(C), and holding a similar sales tax license in at least four other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.
- (b) Within 14 days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the finance director of this City, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon this City's right to recover tax owed by the vendor for the audit period.
- (c) Except as provided in paragraph (g), any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the three year exemption for collection by the City of sales and use taxes may be audited by this City during the twelve months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.
- (d) If this City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (c), the finance director shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten

days after receipt of the taxpayer's request for a coordinated audit. The finance director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

- (e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's finance director shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The finance director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by 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 this City, this City's finance director shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The finance director shall also propose a schedule for the coordinated audit.
- (g) The coordinated audit procedure set forth in this section shall not apply:
  - (1) When the proposed audit is a jeopardy audit,
  - (2) To audits for which a notice of audit was given prior to the effective date of this section,
  - (3) When a taxpayer refuses to promptly sign a waiver of Section 15-1, or,
  - (4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in paragraph (b) of this section.



## **Section 20-8     ADDITION TO TAX - PENALTIES AND INTEREST**

### **8-1     Assessment to Recover Unpaid Penalties and Interest**

If any person or taxpayer or vendor fails, neglects or refuses to collect the tax or to make a return and pay the tax as required by this Code or should fail to remit the proper amount of tax or underpays the tax because of negligence, fraud, or on a regular basis, penalties and interests shall be added and imposed in accordance with the following provisions and in the event the person, taxpayer, or vendor fails to pay the additions to tax penalties and interest as required by this Code then the City Manager, on such information as is available, shall make an estimate of the tax and additions thereto and shall give the delinquent taxpayer, person or vendor written Notice of Final Determination - Assessment - Demand for Payment, which notice shall be served personally or by certified mail, which assessment of deficiency amount will be due and payable thirty (30) days after such notice.

### **8-2     Failure to File Tax Return - Failure to Pay Tax - Deficiency Due to Negligence**

If any taxpayer or vendor fails to file a return or pay the tax on any return required under this Code on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to negligence or intentional disregard of authorized rules and regulations but without intent to defraud, there shall be added ten percent (10%) of the deficiency, and interest in such case shall be collected at a rate established by the Colorado Banking Commission pursuant to C.R.S. 39-21-110.5 with any change in such rate not to take place until the ensuing fiscal year of the City, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and additions shall become due and payable thirty (30) days after a Notice of Final Determination - Assessment - Demand for Payment is sent by certified mail to him by the City Manager.

#### **Regulation 20-8-2**

If any taxpayer or vendor fails to file a return or to pay the tax on any return required by the Code on the date prescribed therefor, the Director shall make an estimate of the tax and shall serve on the taxpayer or vendor a written Notice of Final Determination - Assessment - Demand for Payment. A penalty of ten percent (10%) and interest in the amount established by the Colorado Banking Commission pursuant to C.R.S. 39-21-110.5 with any change in such rate not to take place until the ensuing fiscal year of the City, shall be charged on all overdue accounts. Waiver of all such charges except interest in an amount not to exceed six percent (6%) per annum may be made by the Director upon presentation of justifiable cause for late payment of taxes due. If such tax deficiency amount, penalty and interest is not paid, or no request for a hearing under Section 20-11 is made within thirty (30) days after a Notice of Final Determination - Assessment - Demand for Payment is sent by certified mail to the taxpayer, the taxpayer shall be deemed to have waived his right of protest of such amount.

### **8-3     Mathematical Error on Tax Returns**

In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the City Manager shall notify the taxpayer by a Notice of Final Determination - Assessment - Demand for Payment of the amount of tax in excess of that shown in the return

which is due and has been assessed. The taxpayer shall have no right of protest of appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within thirty (30) days from such assessment.

#### **8-4 Interest on Extensions of Time for Payment of Tax or on Mathematical Errors**

If due to reasonable cause and not due to neglect or intentional disregard, any amount of sales or use tax is not paid on or before the last date prescribed for payment without regard to extensions and time for payment of the tax, interest on such amount at the rate established by the Colorado Banking Commission pursuant to C.R.S. 39-21-110.5 with any change in such rate not to take place until the ensuing fiscal year of the City, and shall be paid for the period from such last date filed to the date paid. In the case of taxes on which the last date for payment is not otherwise prescribed, the last date of payment shall be deemed to be the date the liability for tax arises, and in no event shall it be later than the date notice and demand for the taxes is made by the City Manager or his representative.

##### **Regulation 20-8-4**

In all cases where there is a delay in payment for any cause beyond the due date on which the sales or use tax should have been paid, then interest, at the rate established by the Colorado Banking Commission pursuant to C.R.S. 39-21-110.5 with any change in such rate not to take place until the ensuing fiscal year of the City, must be paid on the amount due from the due date to the date of payment. Interest is computed on the amount of deficiency from the date the tax was due.

#### **8-5 Failure to File Tax Return - Failure to Pay Tax - Deficiency Due to Fraud**

If any taxpayer or vendor fails to file a return or pay the tax on any return required under this Code on the date prescribed therefor, determined with regards to any extension of time for filing, and any part of the deficiency is due to fraud with intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable thirty (30) days after written Notice of Final Determination - Assessment - Demand for Payment by the City Manager and an additional amount of interest at the rate established by the Colorado Banking Commission pursuant to C.R.S. 39-21-110.5 with any change in such rate not to take place until the ensuing fiscal year of the City, shall be added from the date the return was due until paid.

##### **Regulation 20-8-5**

A penalty of fifty percent (50%) and interest at a rate established by the Colorado Banking Commission pursuant to C.R.S. 39-21-110.5 with any change in such rate not to take place until the ensuing fiscal year of the City, shall be charged on any deficiency of a taxpayer who is determined to have had an intent to evade the tax.

## **8-6     Special Penalty**

If any person, taxpayer or vendor liable for the payment of a tax imposed by this section has repeatedly failed, neglected, or refused to pay the same within the time specified for such payment, and the Department of Finance has been required to exercise its enforcement proceedings three or more times through the issuance of a distraint warrant to enforce collection of such taxes due, the City Manager is hereby authorized to assess and collect the amount of such taxes due together with all the interest and penalties thereon provided by law and also an additional amount equal to fifteen percent (15%) of the delinquent taxes, interest and penalties due, or the sum of twenty-five (\$25.00), whichever amount is greater, said additional amount being imposed to compensate the Department for administrative and collection costs incurred in collecting such delinquent taxes.

## **8-7     City Manager May Waive Penalty and Interest**

The City Manager is hereby authorized to waive, either partially or in whole, for good causes shown any penalty assessed pursuant to this Code and interest imposed in excess of one-half percent (1/2%) per month.

### **(A) Interest Assessment**

Interest prescribed under this section shall be paid upon notice and demand, and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

### **(B) No Interest Assessed on Credit**

If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

### **(C) Interest Assessment Period**

Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

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## **Section 20-9     INTEREST ON OVERPAYMENTS AND REFUNDS**

### **9-1     Interest Allowance Basis**

Interest shall be allowed and paid upon any overpayment in respect of any sales or use tax at one-half (1/2) of the rate established by the Colorado Banking Commission as provided in Section 20-8-2 of this Code.

#### **(A) Credit Period**

In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

#### **(B) Credit Limitation**

In the case of a refund, from the date of the overpayment to a date, to be determined by the City Manager or his representative, preceding the date of the refund check by not more than thirty (30) days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

### **9-2     Erroneous Refund to Bear Interest**

Any portion of a sales or use tax, or any interest, assessable penalty, additional amount or addition to tax which has been erroneously refunded shall bear interest at the rate set by the Colorado Banking Commission as provided in Section 20-8-2 of this Code.

### **9-3     No Interest on Certain Refunds**

If any overpayment of sales or use tax is refunded within ninety (90) days after the last date prescribed for filing the return of such tax, determined without regard to any extension of time for filing the return, no interest shall be allowed under Subsection 20-9-1 on such overpayment, nor shall any such interest be allowed on taxes refunded in Subsection 20-10-8 through Subsection 20-10-11 herein.

#### **Regulation 20-9-3**

For the purposes of this section, the date of overpayment shall mean the date upon which such tax, penalty and interest was paid. In any case, where the refund of the overpayment is issued by the Department within ninety (90) days of the claim, no interest will be paid. No claim will be considered until the application for refund is complete and the time period for determining the date of the claim shall be computed from the date when the application for refund is complete. An application for refund is not considered complete until all supporting documentation has been received and approved by the Department.

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## **Section 20-10 REFUNDS**

### **10-1 Refunds Not Assignable**

The right of any person to a refund under this Code shall not be assignable and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown on the invoice of the sale thereof.

### **10-2 Burden of Proof of Exemption**

The burden of proving that sales, services and commodities, on which tax refunds are claimed, are exempt from taxation under Section 20-5 or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the City Manager may prescribe.

#### **Regulation 20-10-2**

Refunds are granted only where there were duplicated payments, payments on business established as exempt, error in computation or through mistake either of law or fact. The burden of proof is on the claimant to establish the right to a refund.

Refund Claim Forms may be obtained from the City. Each claim for a refund will be given careful consideration and will be processed with due speed.

The purchase and sale of all other articles of tangible personal property not otherwise exempt are subject to the sales or use tax imposed thereon. Exemptions are strictly construed. The list of exempt commodities cannot be increased by implication or similarity. In all cases, the proof is upon the vendor to establish that a sale is tax exempt, with delivery receipts, bills of lading, invoices with address and building permit number, or other evidence of proof that the sale was exempt.

### **10-3 Disputed Tax**

Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Chapter, nevertheless the seller shall collect and the purchaser shall pay the tax and the seller shall issue to the purchaser a receipt or certificate showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption.

#### **Regulation 20-10-3**

Where the sale is clearly and indisputably exempt, the vendor is not required to collect or remit any tax for such sale. However, if there is doubt or dispute between the purchaser and the vendor as to the taxability of a sale, the vendor must collect and remit the tax, and the purchaser must pay the tax. The vendor must thereupon issue a receipt to the purchaser for the tax so paid, which receipt must show the date of the purchase, the name of the vendor, the name of the purchaser, the article purchased, the sale price, the amount of tax paid, and the reason for the claim of exemption. The purchaser may apply to the Director of Finance for a refund (See Subsection 20-10-4). Such claim must be made within three (3) years after the purchase of the goods, in writing on Claim for Refund forms provided by the City. The Director of Finance will determine the right to a refund, and in so determining such right, decide the question of exemption.

#### **10-4    Refund to be Allowed if Exempt**

A refund shall be made, or credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as in this Code provided. Such refund shall be made by the Director of Finance after compliance with the following conditions precedent: Applications for refund must be made within three (3) years after the purchase of the goods whereon an exemption is claimed; and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller; and be made upon such forms as shall be prescribed and furnished by the City Manager, which forms shall contain such information as said City Manager shall prescribe.

##### **Regulation 20-10-4**

A claim for refund should be filed on the form provided by the Director of Finance within three (3) years after the purchase event for which such claim arose. In lieu of a claim for refund, the taxpayer may file an amended return or returns for the period covered by the claim. The claim for refund must be accompanied by a statement of facts upon which the application is based and such facts must be clearly set forth. The Director is authorized to make a refund when the overpayment is discovered by him (See Subsection 20-10-6). Warrants in payment of claims allowed by the Director will be drawn in the names of persons entitled to the money.

#### **10-5    Refund Disallowed**

Upon receipt of such application, and all documentation relied upon by the vendor or taxpayer in support of the request for refund which establishes the basis for the request for refund, the City Manager shall examine the application with all due speed and shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within thirty (30) days after such decision is mailed to them as shown by the postmark on certified mail, may petition the City Manager for a hearing on the claim in the manner provided in Section 20-11 and may appeal to the District Court in the manner provided herein.

##### **Regulation 20-10-5**

Any taxpayer who may wish to contest the decision to deny his claim for a refund may request a hearing on the claim. Such a hearing request shall be submitted in writing to the Director, acting on behalf of the City Manager, within thirty (30) days after the notice of denial is mailed to the taxpayer, and in the manner provided in Section 20-11. After the hearing, any aggrieved taxpayer may appeal the Director's determination of the hearing to the Adams County District Court within thirty (30) days of the mailing of such determination notice, and in the manner provided in Section 20-12.

#### **10-6    Refund Payment**

If the City Manager discovers from the examination of a return within the time periods provided for the filing of refunds, or upon claim duly filed by the taxpayer, or upon final judgment of a court, that the tax, penalty, or interest paid by any taxpayer is in excess of the amount due or has been illegally or erroneously collected, then the City Manager shall rule in favor of the taxpayer for refund of such illegally collected tax, penalty, or interest, regardless of whether or not such sum was paid under protest, together with interest provided in Section 20-9. The City Manager



shall issue a warrant for the payment to the taxpayer, out of the reserve of the appropriate city fund; provided therefor; provided, that the City Manager shall keep in his files a duplicate of said voucher and also a statement which shall set forth the reason why such refund shall have been ordered.

#### **10-7 Refund to Offset Previous Tax Due**

Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax imposed by this Code, and that there is an unpaid balance of tax and interest accrued according to the records of the Director, owing by such taxpayer for any other period, so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance, shall be credited thereto and any excess of the overpayment shall be refunded.

#### **10-8 Special Refund - Undercollection - Retailer Overpayment of Taxes**

If any retailer can demonstrate to the reasonable satisfaction of the City Manager, or his authorized agent, that consistent, diligent application and adherence by the retailer of the equivalent four and one-half percent (4.5%) bracket system rates results in actual under collection of the sales tax by the retailer, then the City Manager is authorized to allow said retailer either a credit against future tax liability or a refund of such under collection, as the City Manager may determine.

#### **10-9 Special Refund - Estimated Payment Basis - Contractor Overpayment of Taxes**

Application for refund by contractors prepaying on an estimated percentage basis, or actual tax basis, shall be made within thirty-six (36) months after the date of purchase and shall be made on forms prescribed and furnished by the City Manager, which form shall contain, in addition to the foregoing information, such pertinent data as the City Manager shall prescribe.

#### **10-10 False or Fraudulent Refund Claim**

Any applicant for refund under the provisions of this section, or any other person who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable as provided herein.

#### **10-11 Action to Recover Fraudulent Claims**

If any person be convicted under the provisions of this section, such convictions shall be “prima facie” evidence that all refunds received by such person during the current year were obtained unlawfully and the City Manager is hereby empowered and directed to bring appropriate action for recovery of such refunds.

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## **Section 20-11 HEARINGS**

### **11-1 Protest or Appeal Periods**

#### **(A) Notice of Final Determination – Assessment – Demand for Payment**

An appeal of a Notice of Final Determination - Assessment - Demand for Payment issued to a vendor or taxpayer for failure to file a return, underpayment of a tax owed or as a result of an audit shall be submitted in writing to the City Manager or other designated officer within thirty (30) calendar days from the date of mailing by the City of such Notice of Final Determination – Assessment – Demand for Payment as shown by the postmark on certified mail. Any such appeal shall identify the amount of tax disputed and the basis for the appeal. The time period set forth in this paragraph may, in the absolute discretion of the City Manager, be waived for good cause on written application of a vendor or taxpayer.

#### **(B) Denial of Refunds**

An appeal of a denial of a refund shall be submitted in writing to the City Manager within thirty (30) calendar days from the date of mailing such notice of the denial of the refund by the City by the postmark on certified mail and shall identify the amount of the refund requested and the basis for the appeal. The time period set forth in this paragraph may, in the absolute discretion of the City Manager, be waived for good cause on written application of a vendor or taxpayer.

#### **(C) Compliance with Requirements for Appeals**

The time period of thirty (30) days for filing an appeal of a Notice of Final Determination – Assessment – Demand for Payment or for filing an appeal of a denial of a refund, as applicable, shall not be deemed satisfied or tolled until a completed petition that complies with the requirements of Regulation 20-11-1 of this Tax Code is received by the Director as the designated officer of the City Manager within thirty (30) calendar days from the mailing by the City of such Notice of Final Determination – Assessment – Demand for Payment or denial of refund, as applicable, as shown by the postmark on certified mail except as extended by the City as herein provided. Failure to timely file a completed petition for an appeal, as required by Regulation 20-11-1 of this Tax Code, shall preclude any further right to an appeal including the prohibition of a right to any appeal pursuant to C.R.S. 29-2-106.1 due to a failure to exhaust the remedies available under the City's Tax Code. In the event the Director determines that the petition for a hearing is not complete, the Director shall send notice of such determination to the petitioner describing the deficiencies in the petition. The thirty-day time period herein provided for shall be extended an additional twenty (20) days or as otherwise extended by the Director from the date notice was sent by certified mail that an appeal petition is found to be incomplete by the Director.

#### **(D) Mailing of Notices**

All notices required herein to be sent by mail shall be sent by certified mail to the petitioner filing the appeal addressed to the most recent address as shown on the records of the City.

### **Regulation 20-11-1**

Any taxpayer may petition the Director for a hearing upon a Notice of Final Determination – Assessment – Demand for Payment, or upon a denial of his claim for refund, in the following manner:

- (1) The request for a hearing must be submitted in writing, within thirty (30) days of the postmark date of mailing by certified mail of the Notice of Final Determination – Assessment – Demand for Payment, or denial of refund.
- (2) The applicant must set forth the facts on which he relies, together with a statement of the law under which he claims the relief requested, but in all cases, the request for hearing shall include the following information:
  - (a) Taxpayer's name, address and account number (if any).
  - (b) The Taxpayer's copy of the Notice of Final Determination – Assessment – Demand for Payment (if the claim arises upon such notice).
  - (c) The taxable period(s) involved.
  - (d) The amount of tax and/or interest and penalties, in dispute.
  - (e) An itemized schedule of the findings and determinations with which the applicant does not agree.
  - (f) A summary statement of the ground upon which the applicant relies for his claim of relief.
  - (g) All documentation relied upon by the vendor or taxpayer in support of the appeal and which establishes the basis for the appeal.
- (3) Upon a determination by the Director that the petition for a hearing is complete a hearing will be set within a reasonable time at a place and time fixed by the Director. The taxpayer may appear in person with or without an attorney or other representatives, and present his entire case in support of his position, including the filing of any brief or affidavits he deems pertinent to his cause.
- (4) After a consideration of the evidence and arguments presented at the hearing, the Director will make a determination within a reasonable time after the hearing and send to the taxpayer, by certified mail, a Hearing Determination Notice stating the grounds for allowance or rejection, in whole or in part, of the claim.
- (5) If there is any amount of deficiency assessment of taxes found to be due and owing, the Hearing Determination Notice shall constitute an assessment. Within thirty (30) days after the certified mailing of the Determination Notice, the taxpayer shall pay any outstanding tax, together with any interest and penalties, or he may appeal the Director's determination as provided in Section 20-12. If any tax, which is due and owing, is not paid within the thirty (30) day period, and no appeal is made, the collection of the tax may be enforced.
- (6) In lieu of filing a request for hearing within the required thirty (30) day period the taxpayer may file a written brief and other pertinent written materials or documents and request that the Director reconsider the deficiency or denial of the refund claim without a hearing. Any written material submitted in lieu of a hearing shall be used by the Director to reconsider the deficiency or the denial of refund, in the same manner as if the material had been presented at a formal hearing (See Subsection 20-11-5). Any brief must be submitted in duplicate for each assessment, deficiency or denial of refund, and must be subscribed and sworn to by the taxpayer or his agent under the penalty of perjury.
- (7) After a hearing, the taxpayer does not have the right to have another hearing on the same matters included in his previous request for hearing.

- (8) If there is no request for a hearing, any tax, together with any interest or penalties, shall be immediately due upon the expiration of thirty (30) days from the postmark date of mailing by certified mail of the Notice of Final Determination – Assessment – Demand for Payment.
- (9) No hearing shall be required if the dispute is solely based on a dispute of facts with the audit. In that event, the Director may decide the factual issues based on written documentation without a hearing.

#### **11-2 Hearing Time and Place**

The City Manager shall notify the taxpayer in writing of the time and place for such hearing thirty (30) days prior thereto. In all cases, the hearing shall be held in Commerce City, Colorado, at the office of the Director.

#### **11-3 No Second Hearing**

After a hearing under this section, the taxpayer shall not be entitled to a second hearing before the City Manager on the matters set forth in his previous request for hearing.

#### **11-4 City Manager or Designee to Conduct Hearing**

The hearing shall be held before the City Manager or designee. The Hearing Officer is hereby authorized to administer oaths and take testimony. At the hearing, the taxpayer may assert any facts, make any arguments and file any briefs he believes pertinent to his cause. Affidavits shall generally not be accepted as reliable evidence. However, the Hearing Officer in his sole discretion may consider affidavits as evidence if they are found reliable and not merely self-serving.

#### **11-5 Request for Extension of Time for Hearing**

In lieu of the request for hearing within the time provided by this section the taxpayer may, at his election, request an extension of time for hearing. The written request for such extension must be filed within said thirty (30) days from Notice of Final Determination – Assessment – Demand for Payment or Final Denial of Refund, or the taxpayer must file a written brief and such other materials or documents as he shall deem appropriate and request that the City Manager reconsider the deficiency without a hearing. The City Manager shall proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to this section. The submission of written material shall be considered for all purposes the same as a request for a hearing and submission of the material at a hearing.

#### **11-6 Request for Hearing - Time Limitation**

After the expiration of thirty (30) days from the mailing of the Notice of Final Determination – Assessment – Demand for Payment or Denial of Refund, if the tax has not been paid or if no request for hearing, or no written brief has been filed by the taxpayer, then the Notice of Final Determination – Assessment – Demand for Payment, shall constitute a final assessment of the amount of the tax specified, together with interest, additions to tax and penalties or shall constitute a final denial of refund, as the case may be.

#### **11-7 City Manager May Adjust Tax Under Question**

Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions at any hearing, the City Manager may modify and abate in full the tax, penalty and interest questioned at the hearing or may approve a refund.

#### **11-8 Hearing Determination Notices**

Upon rejection, in whole or in part, of the claim for refund or upon the finding by the City Manager that, on hearing the evidence, a valid assessment in whole or in part has been made against the taxpayer, the City Manager shall send a hearing Determination Notice to the taxpayer setting forth the amount of claim for refund denied or the amount of deficiency in the assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

Unless an appeal be taken as provided in Section 20-12 of this Code, the tax, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after certified mailing of the Hearing Determination Notice to taxpayer.

## **Section 20-12 APPEALS**

### **12-1 Appeal to Colorado Department of Revenue or to District Court**

After compliance with Section 20-11-1(A) or Section 20-11-1(B), as applicable, of this Tax Code, the taxpayer may contest an audit or a denial of a claim for refund, as applicable, by proceeding as provided in Colorado Revised Statutes (C.R.S.) 29-2-106.1. No act or omission of any City official, employee or representative shall be construed to stop or waive the applicability of any of the time provisions set forth in C.R.S. 29-2-106.1 in the absence of a written agreement with the City that states with particularity the extension of any time period set forth in C.R.S. 29-2-106.1.

### **12-2 Venue**

Venue and jurisdiction to hear and determine appeals is hereby conferred on the Adams County District Court.

### **12-3 Filing of Bond**

Within fifteen (15) days after filing an appeal, the taxpayer shall file with the District Court a bond in twice the amount of the taxes, interest, and other charges stated in the final determination by the City Manager which are contested on appeal. However, the taxpayer may at his option deposit the disputed amount with the City Manager in lieu of posting bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action.

At the conclusion of the action the funds deposited shall be, at the direction of the court, further retained by the Director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate as determined by the Colorado Banking Commission as provided in Section 20-8-2 above.

### **12-4 Judgment on Appeal**

The final decision made in such appeal shall be entered as a judgment as in other civil cases against the taxpayer or against the City as the case may be.

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### **SECTION III**

#### **COMMERCE CITY SALES & USE TAX CODE (20) - “ENFORCEMENT” AND REGULATIONS**

Reproduced in this portion of the Handbook are the Code sections and regulations dealing with enforcement and regulation of the Code.

This “Enforcement” section of the Handbook contains the following parts:

|  |                      |
|--|----------------------|
| Assessment, - Liens - Distraints - Seizures and Sale -<br>Compromise - Closing Agreements..... | Section 13           |
| Violations - Evasion of Collection or Payment of Tax - Penalty .....                           | Section 14           |
| Limitations .....  | Section 15           |
| Colorado Municipal League Requirements .....   | Section 16<br>and 17 |
| Severability .....   | Section 18           |

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## **ARTICLE III**

### **ENFORCEMENT**

#### **Section 20-13 ASSESSMENTS - LIENS - DISTRAINTS - SEIZURE AND SALE - COMPROMISE - CLOSING ARGUMENTS**

##### **13-1 Sales and Use Tax Constitutes Lien**

Sales and Use Tax shall be a first and prior lien upon perfection as provided in Sections 13-6 and 13-7 on tangible personal property sold, purchased, stored, used, distributed, or consumed. When such tax is collected by retailers or agents, the Sales or Use Tax imposed by the Tax Code shall be a first and prior lien upon all goods and business fixtures of or used by any retailer under lease, title-retaining contract or other contract arrangement, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature.

##### **13-2 Sale of Business - Purchases Subject to Lien**

###### **(A) Sale of Business**

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

###### **Regulation 20-13-2-(A)**

Where any vendor sells his business or stock of goods, he shall complete a sales tax return and pay all taxes due within ten (10) days of such sale. Purchasers and sellers of a business or stock of goods are both liable for any unpaid tax due on sales made by a seller, including tax on outstanding accounts on which a sales tax has not been remitted by the seller. The purchaser is required to withhold sufficient of the purchase money to cover any taxes due and unpaid, or other adequate security to protect the amount due the City.

Upon the sale of a business, tax must be paid by either the seller or by the purchaser on the purchase price of fixtures, equipment, machinery and any other tangible personal property not a part of the stock in trade of the business.

###### **(B) Purchases Subject to Lien**

If the purchaser of a business or stock of goods fails to withhold the purchase money as above provided and the taxes shall be due and unpaid after ten (10) day period allowed, he, as well as the seller, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods in trade or business fixtures of or used by any person under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes same subject to the lien for any delinquent sales taxes owed

by such person, and shall be liable for the payment of all delinquent sales taxes of such prior owner or lessee, not, however, exceeding the value of the property so taken or acquired.

### **13-3 Status of Unpaid Tax in Bankruptcy and Receivership**

Whenever the business or property of any taxpayer subject to this Code shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this Code and for which said retailer is in any way liable under the terms of this Code, shall be a prior and preferred lien against all the property of said taxpayer, except as otherwise provided by law. No sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this Code under process or order of any Court, without first ascertaining from the City Manager the amount of any taxes due and payable under this Code, and if there be any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any monies to a judgment creditor or other claims of whatsoever nature, except the costs of the proceedings and other pre-existing claims or liens as above provided.

### **13-4 Construction Improvements - Liens, Etc.**

The full amount of unpaid taxes arising from and required to be reported on personal property affixed to real property under this Code, together with interest and penalties as herein provided, shall be and constitute a first and prior lien, which lien shall have precedence over all other liens of whatsoever kind and nature except as otherwise provided by law.

### **13-5 Refusal to Make Returns - Estimate of Taxes - Notice of Final Determination - Assessment - Demand for Payment**

#### **(A) Assessment of Taxes**

If any person or taxpayer or vendor fails, neglects, or refuses to collect the tax or make a return and pay the tax as required by this Code or should fail to remit the proper amount of tax or underpays the tax because of negligence, fraud or on a regular basis, the City Manager shall make an estimate based upon such information as may be available and shall add thereto the additions to tax, penalty and interest as set forth in Section 20-8 herein and promptly thereafter issue to the delinquent taxpayer a Notice of Final Determination – Assessment – Demand for Payment of such estimated taxes, penalty and interest which notice shall be served personally or by certified mail and shall be due and payable thirty (30) days from such service.

#### **(B) Hearing and Appeals Provisions**

The provisions as to Hearings and Appeals as set forth in Section 20-11 and 20-12 shall apply to such Notice of Final Determination – Assessment – Demand for Payment.

### **13-6 Notice of Tax Lien**

If any taxes, penalty or interest imposed by this Code and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided herein, are not paid within thirty (30) days after the same are due, the City Manager shall issue a notice to the taxpayer by certified mail, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the City of Commerce City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer.

### **13-7 Recording of Lien on Real Property and Foreclosure Thereof**

Said notice shall be on forms prescribed by the City Manager and shall be verified by him or his duly authorized representative whose duties are the collection of such tax. Said notice may be recorded against the real property of the taxpayer in the office of the Clerk and Recorder of any County in the State in which the taxpayer owns real property and, after recording the notice shall constitute a lien on such real property of the taxpayer. After said notice has been recorded, the City Manager may proceed with foreclosure of the lien on behalf of the City in accord with the law governing judicial foreclosures as provided in Subsection 20-13-10(C).

### **13-8 Jeopardy Assessment and Distraint**

#### **(A) Jeopardy Enforcement**

If the City Manager finds that collection of the tax will be jeopardized by delay, in his discretion, he may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the City Manager may proceed immediately to collect such tax as provided in Subsection 13-9.

#### **(B) Immediate Enforcement Action**

In any other case wherein it appears that the revenue is in jeopardy, the City Manager may immediately issue demand for payment; and, regardless of the provisions of Sections 20-11 and 20-12 of the Code, the tax shall be due and payable forthwith and, in his discretion, the City Manager may proceed immediately to collect said tax as provided in Subsection 13-9.

#### **(C) Security for Payment**

Collection under either Subsection (A) or (B) of this section may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the City Manager.

#### **Regulation 20-13-8 (A), (B) and (C)**

The provisions of Subsection 20-13-8 (A), (B) and (C) shall include, but not be limited to, cases where a taxpayer intends to leave the City, where properties are being moved from the City, where properties are sold and the proceeds transported beyond the borders of the City and where funds are being dissipated.

In any case where the Director of Finance finds it necessary to immediately collect the tax, he may declare the taxable period closed and immediately demand payment of the tax and levy upon any property or money, unless bond is given by the taxpayer in an amount sufficient to secure payment to the Director. The assessment is due and payable at the time specified in the notice of assessment.

If the tax has not been paid in full or no return has been filed, or whenever the examination of a return discloses a deficiency, and the Director of Finance believes that the collection of the tax or deficiency will be jeopardized by delay, a jeopardy assessment will be made and a distraint warrant issued immediately.

### **13-9 Methods of Enforcing Collection**

#### **(A) When Distraint Issued**

The Manager may issue a warrant under his own hand directed to any employee, agent, or representative of the Department of Finance, sometimes in this section referred to collectively as “agent”, or “revenue collector”, or “sheriff” of any county of the State, commanding him to distrain, seize, and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any statute of this state, for the payment of the tax due together with penalties and interest accrued thereon and cost of execution.

- (1) When any deficiency in tax is not paid within thirty (30) days from the mailing of Notice of Final Determination – Assessment – Demand for Payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this state within said period; or,
- (2) When any other amount of tax, penalty, or interest is not paid within thirty (30) days from the mailing of assessment and demand for payment thereof; or,
- (3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Subsection 20-13-8.

#### **Regulation 20-13-9-(A)**

The Director may issue a warrant for the distraint, seizure and sale of personal property of any taxpayer, within statutory limitations, (1) when any deficiency in tax is not paid within thirty (30) days from the mailing of a Notice of Final Determination – Assessment – Demand for Payment and no hearing has been requested nor an appeal docketed within this period; or (2) when an amount of tax, penalty, or interest is not paid within thirty (30) days from the mailing of the Notice of Final Determination for Payment thereof; or (3) immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Subsection 20-13-8. Such warrant shall be issued for the payment of the tax due together with penalties and interest accrued thereon and the cost and expenses incurred in the collection, distraining, execution and sale thereto.

#### **(B) Distraint Seizure - Advertisement of Sale - Owner Recovers Seized Property by Purchase**

- (1) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be

left with the owner or possessor, or at his usual place of abode with some member of his family over the age of eighteen (18) years, or at his usual place of business with his stenographer, bookkeeper, or chief clerk, or if the taxpayer is a corporation, shall be left with any officer, manager, general agent, or agent for process, with a note of the sum demanded and the time and place of sale.

(2) The agent charged with collection shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in a legal newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the City Manager, the agent or sheriff shall cause such notice to be publicly posted at the court house of the county wherein such distraint is made, and copies thereof to be posted in at least two other public places within the said county. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he deems it advisable, but not for a time to exceed in all ninety (90) days from the date first fixed for the sale.

(3) When any personal property is advertised for sale under distraint as aforesaid, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale.

(4) If the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him for the City. The property so purchased may be sold by the agent or sheriff as directed by the City.

(5) In any case of distraint for the payment of the taxes, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if prior to the sale, the amount due is paid, together with the fees and other charges or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

### **(C) Certificate of Sale - Evidence of Purchase**

In all cases of sale, the agent or sheriff making the sale shall:

(1) Issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale, and the conclusive evidence of the regularity of his proceedings in making the sale; and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold.

(2) Where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company, or association of said transfer, and said certificate of such sale shall be authority for such corporation, company, or association to record the transfer on its books and records.

(3) Where the subject of sale is securities or other evidences of debt, in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person.

(4) Any surplus remaining above the taxes, penalties, interest, costs, and expenses of making the seizure and of advertising the sale, shall be returned to the owner, or such other person having a legal right thereto, and on demand, the City Manager shall render an account in writing of the sale.

#### **(D) Filing and Release of Lien**

Any employee, agent, or representative of the City Manager to whom a warrant has been issued may file a notice of lien in such forms as the City Manager may prescribe with the person in possession of any personal property or right to property belonging to the taxpayer, and if not previously recorded, the filing of such notice of lien shall operate from the date of such filing. The City Manager may release said lien as to any part or all of the property or rights to property covered by any such lien upon such terms as he may deem proper.

#### **(E) Lien Released**

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

### **13-10 Recovery of Unpaid Tax by Action at Law**

#### **(A) Action at Law**

The City Manager may also treat any such taxes, penalties, or interest due and unpaid as a debt due the City from the taxpayer. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the City Manager may authorize a lawsuit on behalf of the City for collection of the amount of such taxes, penalties, and interest in such county or district court having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the City Manager as herein provided, shall be prima facie proof of the amount due.

#### **(B) Writs of Attachment**

Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff, and in any such proceedings, no bond shall be required of the City nor shall any sheriff require of the City an indemnifying bond for executing the writ of attachment, or writ of execution upon any judgment entered in such proceedings; and the City may prosecute appeals or writs of error, in such cases without the necessity of providing bond therefor. It shall be the duty of the City Attorney, when requested by the City Manager, to commence action on behalf of the City for the



recovery of taxes due under this Code, and this remedy shall be in addition to all other existing remedies provided in this Code.

### **(C) Civil Action to Enforce Lien**

In any case where there has been a refusal or neglect to pay any tax due the City and a statement or notice shall have been recorded which, under law, creates a lien upon any real property for such tax, the City Manager may cause a civil action to be filed by the City in the district court of the county in which is situated any real property which is subject to said lien, to enforce the lien of the City for such tax upon the real property situated in that county or in any other county in the state which may be subject to such lien or to subject any real property or any right, title, or interest in real property to the payment of such tax. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and of the City; the proceedings in such action and the manner of sale, the period for and manner of redemption from such 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.

### **13-11 City - A Party Defendant**

In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein, and in any such action service of summons upon the City Manager, or any person in charge of the Department of Finance or any other person permitted by law, shall be sufficient service and binding upon the City.

#### **Regulation 20-13-11**

Any person having a lien or any interest in any real estate referred to in Subsection 20-13-10(C), under or by virtue of any instrument which shall have been duly filed or recorded in the office of the county clerk and recorder of the county in which such real estate is located prior to the filing of the statement or notice which created a lien upon such real property for such taxes, or any person purchasing such real estate at a sale to satisfy such lien or interest may make a written request to the Director of Finance to file a civil action as provided in Subsection 20-13-10(C). If no such civil action shall have been commenced as provided in Subsection 20-13-10(C) within two (2) months after receipt by the Director of Finance of such written request, such person or purchaser may file a civil action in the district court of any county where any such real property is situated asking for a final determination of all claims of the City to and all liens of the City upon the real estate in question. Service of the process in such action upon the City of Commerce City shall be made upon the Director of Finance or upon one of his deputies. Permission is hereby given for the City to be so sued. The court shall in such civil action adjudicate the matters involved therein in the same manner as in the case of civil actions filed under Subsection 20-13-10(C).

### **13-12 Corporation and Corporate Directors, Officers and Agents as Defendants**

Whenever a corporation shall violate any of the provisions of this Code, such violation shall be deemed to be also that of each of the individual directors, officers and agents of such corporation who have authorized, ordered or done any act(s) constituting, in whole or in part, such violation

or who have acquiesced in any failure to act or failed to act on behalf of the corporation causing a failure to comply with any Code requirements imposed on the corporation. Such violation shall be deemed a violation of this Code and, upon conviction, any such director, officer or agent shall be punishable to the same extent as is provided in this Code for any other person. In addition, an action may lie against such director, officer or agent as provided in Section 20-13-10 of this Code.

### **13-13 Certificate of Discharge - Partial - Values Determined**

#### **(A) Certificate of Discharge Subject to Lien**

If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if he finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

#### **(B) Certificate of Discharge to Part of Property**

If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if there be paid over to the City Manager in part satisfaction of the liability in respect to such tax an amount determined by the City Manager, which shall not be less than the value, as determined by him, of the interest of the City, in the part to be so discharged.

#### **(C) How Values Determined**

In determining such values, the City Manager shall give consideration to the fair market value of the part to be so discharged and to such lien thereon as have priority to the lien of the City.

#### **(D) Certificate of Release Conclusive**

A certificate of release or of partial discharge issued under Subsection 20-13-13(A) shall be held conclusive in order that the lien of the City upon the property released therein is extinguished, but shall not extinguish, nor release, any portion of the lien on property not specified in the release.

### **13-14 Summons to Court for Violation of Code**

The City Manager or his duly authorized agent, including, but not limited to, personnel of the Department of Finance may summons to Commerce City Municipal Court any person who may be in violation of this Code as set forth in Section 20-14, and elsewhere herein.

### **13-15 Compromise**

The City Manager may compromise any sales and use tax issue when such compromise is determined by the City Manager to be in the best interest of the City.

### **13-16 Closing Agreements**

#### **(A) Satisfaction of Liability**

For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships, and corporations in the process of dissolution or which have been dissolved, the City Manager may agree with the fiduciary or Director upon the amount of taxes due from the decedent, or from the decedent's estate, the trust, receivership, or other fiduciary relationship, or corporation, for any of his or its taxable periods, under the provisions of the taxes covered by this Code and except upon a showing of fraud, malfeasance or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.

#### **Regulation 20-13-16-(A)**

When trustees, receivers, executors, administrators, or other fiduciaries, by virtue of their appointment (whether appointed by a state or federal court) continue to operate, manage, or control a business engaged in the sale of tangible personal property at retail, they must collect and remit the sales tax. In addition, they must report all items subject to the Commerce City Sales and Use Tax and remit payment therefor.

The taxes apply notwithstanding that such trustees, receivers, executors, administrators, or other fiduciaries may be engaged in liquidating the assets from a bankrupt, insolvent, or a decedent.

#### **(B) Personal Liability**

Except as provided in Subsection 20-13-16(D) of this section, any personal representative of a decedent, or of the estate of a decedent, or any trustee, receiver, or other person acting in a fiduciary capacity, or any Director of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his control without having first paid any taxes covered by this Code due from such decedent, decedent's estate, trust estate, receivership, or corporation, covered by this Code and which may be assessed within the time limited by this Code, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership, or corporation, covered by this Code and which may be assessed within the time limited by this Code.

#### **(C) Notification of Liability**

The distributee of a decedent's estate, or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, or corporation, shall be liable to the extent of the decedent, trust estate, fund, or corporation, covered by this code and which may be assessed within the time limited by this Code. Notice to

such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

**(D) Limitation of Liability**

- (1) In case the tax imposed by this Code is due from a decedent, of or his estate, or by a corporation, in order for personal liability under Subsection (B) of this section to remain in effect, determination of the tax due shall be made and notice and demand therefor shall issue within eighteen (18) months after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent, or by the corporation, filed after the filing of its return; but a request under this provision shall not extend the period of limitation otherwise applicable.
- (2) This Subsection (D) will not apply in the case of a corporation unless:
  - (a) Such request notifies the Director that the corporation contemplates dissolution at or before the expiration of such eighteen (18) month period.
  - (b) The dissolution is begun in good faith before the expiration of such eighteen (18) month period; and,
  - (c) The dissolution is completed.
- (3) Upon the expiration of said eighteen (18) month period, without determination being made and notice and demand being issued, the personal representative or representatives of the decedent, and the directors of the corporation no longer will be liable under the provisions of Subsection (B) of this section.

**13-17 Intercity Claims for Recovery**

The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes to the City.

- (a) As used herein, "Claim for Recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (b) When it is determined by the Director of Finance of the City that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.

- (c) The City may make a written Claim for Recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a Claim for a Recovery lies in the sole discretion of the City. Any Claim for Recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the Claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a Claim for Recovery may, for good cause, request an extension of time to investigate the Claim, and approval of such extension by the City shall not be unreasonably withheld.
- (d) Within ninety (90) days after receipt of a Claim for Recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the Claim in writing that the Claim is either approved or denied in whole or in part, including the reasons for the decision. If the Claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the Claim within thirty (30) days of approval. If a Claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a Claim for Recovery may only be made for good cause.
- (e) The City may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer.
- (f) The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery.

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## **Section 20-14 VIOLATIONS - EVASION OF COLLECTION OR PAYMENT OF TAX - PENALTY**

### **14-1 Evasion and Avoidance of Tax**

It shall be a violation of this Code for any retailer, vendor, consumer, purchaser or any other person subject to the tax levied by the City pursuant to this Code to refuse to make any return provided to be made by this Code, or to make any false or fraudulent return, or any false statements in any return, or to fail or refuse to make payment to the City Manager of any taxes collected or due the City, or in any manner to evade the collection and payment of the tax, or any part thereof, imposed by this ordinance, or for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by this Code. Any corporation, partnership, association or person making a false return or a return containing a false statement shall have violated this code and shall be subject to prosecution and the imposition of penalties as provided by law. Any person in violation of this Code shall be subject to these same penalties.

### **14-2 Fine and Imprisonment**

Any person, corporation, partnership or association who shall violate any of the provisions of this Code shall be guilty of a violation thereof and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or imprisonment not to exceed six (6) months, or both such fine and imprisonment, and if any such person is an employee or officer of the City, such violation shall be grounds for dismissal from his office or employment.

### **14-3 Separate Violations**

Each and every twenty-four (24) hours continuation of any violation shall constitute a distinct and separate offense.

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## **Section 20-15 LIMITATIONS**

### **15-1 General Limitations**

#### **(A) Statutory Limitations**

Except as provided in this section and regulation, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Code, shall be subject to a statute of limitations of three (3) years after the date on which the tax was due and payable. If a claim is made against a property owner as a result of the contractor or subcontractor failing to pay taxes owed to the City, the taxes shall not be due and payable by the property owner until after the date of issuance of a notice of claim to the property owner by the City and therefore the statute of limitations shall not commence to run until such notice is issued.

No notice of lien shall be filed, distraint warrant issued or suit for collection instituted, or any other action to collect the same be commenced more than three (3) years after a final determination of the tax liability including exhaustion of all appeal rights. No lien shall continue for more than six (6) years after filing of notice thereof. In the case of a false or fraudulent return with the intent to evade tax, or in the case of a failure to file a tax return, the tax together with interest and penalties thereon may be assessed or proceedings for the collection of such taxes may begin at any time. The certified mailing of a Notice of Final Determination – Assessment – Demand for Payment to the address of the taxpayer, as shown by the records of the Director, shall toll the running of the statutory limitation herein provided for until there is a final determination of the tax liability which, in the case of a tax audit, tax protest or appeal of a claim of tax liability, shall mean the date when the determination of tax liability becomes final and subject to no further appeal.

In order to determine when the “tax was due and payable” for purposes of commencement of the running of the statute of limitations, if any person shall build, construct or improve any building, dwelling or other structure improvement to realty whatsoever, including underground improvements, within the City, and who shall purchase the necessary lumber, fixtures, material or any other supplies needed therefor from any source either within or without the corporate limits of the City (herein referred to as the “Project”), the tax shall be deemed due and payable at the time of issuance by the City or applicable governmental entity of a certificate of occupancy or certificate of completion, as applicable, for the Project, or if no certificate is issued, then upon completion of final inspection of the Project by the City.

If the City provides written notice to the taxpayer of the audit period prior to expiration of the period of limitation, that the latter’s records will be audited pursuant to this chapter, such period of limitation is tolled until there is a final determination of tax liability. “Audit period” includes all reporting periods with due dates which fall within the thirty-six (36) month period preceding the date of the notice of audit and, as provided in Regulation 20-15-1(C), may also include all reporting periods with due dates which fall before the start of the audit.

#### **Regulation 20-15-1(A)**

The statute of limitations shall apply to assessments made or filed more than three (3) years after the tax is due and payable except as otherwise provided in this Code. A notice of lien, a distraint warrant or suit for collection,

or any other action to collect a tax must be commenced within three (3) years after the tax was due and payable. In the case of a tax audit, a tax protest or an appeal of a claim for tax liability, the tax shall not be due and payable until a final determination is made of the tax liability without any right of further appeal. The certified mailing of a written notice to the taxpayer of an audit period prior to the expiration of the period of limitation tolls the period of limitations until there is a final determination of tax liability. Any notice of lien filed prior to the expiration of such three (3) year period shall continue for six (6) years after the filing of the notice thereof. There is no statute of limitations in the case of a failure to file a tax return or in the case of a false or fraudulent return with an intent to evade the tax.

## **(B) Date Fixed**

For purposes of this section, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

## **(C) Revision Qualification - Periods Covered**

Nothing in the section shall be construed to limit any right accrued or to revive any liability barred by any statute at the date this Code or any amendment thereto becomes effective.

### **Regulation 20-15-1(C)**

The statute of limitations on assessments of Commerce City Sales and Use Tax shall be three (3) years from the date the tax was due and payable except as follows:

- (a) Where the return is filed prior to the due date thereof, the statute of limitations will be three (3) years from that date.
- (b) When the taxpayer fails to file a return or files a false or fraudulent return with intent to evade the tax, the tax may be assessed and collected at any time.

## **(D) Reopening for Further Review of Audit**

Performance of an audit of a taxpayer does not preclude reopening the audit or further review of the audit for the same audit period upon determination by the City, in its sole discretion, that such action is necessary and justified.

## **15-2 Trust Status of Tax in Possession of Retailer**

All sums of money paid by the purchaser to the retailer as taxes imposed by this Code shall be and remain public money, the property of Commerce City in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the City of Commerce City until paid to the City, and for failure to so pay to the City such retailer shall be punished as provided by law.

### **Regulation 20-15-2**

All sums of money paid by the purchaser to the retailer as sales or use taxes shall be and remain public money. The retailer is a trustee of such monies and must account for such monies.

The use of recognized accounting procedures to properly segregate and account for such funds will be considered proper trusteeship of such funds. Failure to properly account for such funds and pay them to the Director when due shall be punishable as provided by law.

No statute of limitations applies on City funds in the possession of the retailer and such monies are collectible at any time after their due date upon demand by the Director.

## **Section 20-16 NOTICE OF SALES AND USE TAX ORDINANCE AMENDMENT**

- (a) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the finance director of the City shall file with the Colorado Municipal League prior to the effective date of this section a copy of the City sales and use tax Ordinance reflecting all provisions in effect on the effective date of this section.
- (b) In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the finance director of the City shall file with the Colorado Municipal League prior to the effective date of any amendment a copy of each sales and use tax ordinance amendment enacted by the City.
- (c) Failure of the City to file such ordinance or ordinance amendment pursuant to the section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

**Section 20-17 PARTICIPATION IN SIMPLIFICATION MEETINGS**

The finance director shall cooperate and participate on an as needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

## **Section 20-18 SEVERABILITY**

### **18-1 Parts Severable**

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any word, clause, sentence, paragraphs, section, article or part of this Code, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Code; but the effect thereof shall be confined to the word, clause, sentence, paragraph, section, article or part of this Code so adjudged to be invalid or unconstitutional and to this end this Code is declared to be severable.

## **SECTION IV**

### **COMMERCE CITY SALES & USE TAX CODE “SPECIFIC INDUSTRY” REGULATIONS**

This section contains “Specific Industry” regulations that have been adopted as a part of and are included in the Commerce City Sales and Use Tax Code with the full force and effect as any and all other portions of the Commerce City Sales and Use Tax Code.

## COMMERCE CITY SALES AND USE TAX - CODE 20

### SPECIFIC INDUSTRY REGULATIONS

The rules and regulations are prepared and published for the information of the general public and all persons in business pursuits who would be required to make payment of Sales Tax or Use Tax under provisions of the Commerce City Sales and Use Tax Code, as well as for the guidance of the City employees whose responsibility it is to collect the taxes imposed by the Tax Code and the enforcement thereof. The Sales Tax and Use Tax are parts of a single system of taxation and both involve retail sales and purchases of tangible personal property and the services named in the Code.

It is suggested that the rules and regulations contained in the first three sections of this handbook (Taxation, Administration and Enforcement sections) and these set out in this "Specific Industry Regulations" section be carefully read and studied to the end that there may be a fair, uniform and consistent enforcement of the Code. No single rule or regulation or sentence contained in this handbook is intended to interpret all of the Code, but each provision must be read in the light of other provisions contained herein, in order that a correct construction and interpretation of the Code may be had.

Please refer to the specific industry regulations following and to the Handbook Index for any references to your particular business operation. Refer also to Regulation 20-1-2 of this handbook.

Every assistance will be given taxpayers by this City as well as assistance to retailers and others who are made responsible for the collection of the taxes required to be paid to effect the purposes of this Tax Code.

### ADVERTISING AGENCIES, COMMERCIAL ARTISTS, DESIGNERS

#### Regulation 20-S.I.1

**Nontaxable Services.** - Tax does not apply to charges by advertising agencies, commercial artists or designers for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines or other advertising, or to be broadcast on television or radio; compiling statistical and other information; placing and/or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications; billboards and other forms of outdoor advertising, cards in cars, buses and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, etc. Charges for such items as supervision, consultation, research, postage, express, telephone and telegraph messages, transportation and travel expenses, if involved in the rendering of such services, are likewise excluded from the taxable charge to the customer.



**Agency Fee or Commission.** - When an amount billed as an agency "fee", "service charge", or "commission" represents a charge or part of the charge for any of the nontaxable services described under the above paragraph, the amount so billed is not taxable. Such a charge by a recognized agency will be considered to be made for nontaxable services.

**Items Taxable.** - The tax applies to the entire amount charged to clients for items of tangible personal property such as drawings, paintings, radio and television transcriptions, tapes, films, etc., designs, photographs, lettering, assemblies and printed matter. Whether the items of property are used for reproduction or display purposes is immaterial.

**Preliminary Art.** - "Preliminary Art" as used herein means roughs, visualizations, comprehensives and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. ("Finished art" as used herein means the final art used for actual reproduction by photo-mechanical or other processes.) Tax does not apply to separate charges for preliminary art except where the preliminary art becomes physically incorporated into the finished art, as, for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.

The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art, of one or more of the types mentioned in the preceding paragraph. Proof of ordering or producing the preliminary art prior to date of contract or approval for finished art, shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller. No other proof shall be required.

**Retouching.** - Retouching ordinarily constitutes a step in the process of preparing photographs or other art work for reproduction, and is done to improve the quality of the reproduction. Tax applies to charges for photo retouching.

**Items Purchased by Agency, Artist or Designer.** - An advertising agency, artist, or designer is the consumer of tangible personal property used in the operation of its business, such as stationery, ink, paint, tools, drawing tables, T-squares, pens, pencils, and other office supplies. Tax applies to the sale of such property to the agency, artist or designer. The agency, artist, or designer is the seller of, and may purchase for resale, any item that he resells before use, or that becomes physically an ingredient or component part of tangible personal property sold by him, as, for example, illustration board, paint, ink, rubber cement, flap paper, wrapping paper, photographs, photostats, or art purchased from other artists.

**Billboards and other Outdoor Advertising, Signs, Show Cards and Posters.** - Both the charge made for advertising display materials utilized on billboards and other forms of outdoor advertising, cards in cars, buses and other facilities and the charge made for the lease or rental use of the billboards and public transportation display facilities are taxable to the full extent of such charges made to the customer.

Tax applies to retail sales of signs, show cards and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer.

Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in such work, and tax applies with respect to the sale of such property to him.

## **ANIMAL LIFE**

### **Regulation 20-S.I.2**

Tax does not apply to "wholesale sales" of animal life of a kind the products of which ultimately constitute food for retail consumption, as for example, cattle, sheep, swine, baby chicks, hatching eggs, fish, and bees. Tax does apply, however, to retail sales (except horses for breeding purposes) of any form of animal life not of such a kind, as for example, cats, dogs, horses, mink, and canaries, additionally the rental of animals such as horses at riding stables is taxable.

## **AGRICULTURAL PRODUCERS**

### **Regulation 20-S.I.3**

Sales of insecticides, chemicals used for destroying weeds, pests, or insects, medicines, veterinary supplies, machinery, equipment, and general supplies used by agricultural producers are taxable.

There is exemption under the Code on the sale of feed for livestock and poultry, seeds and orchard trees.

## **ALCOHOLIC BEVERAGE SALE**

### **Regulation 20-S.I.4**

- (1) Sales of fermented malt beverages, malt, vinous, or spirituous liquors by the package and the drink are subject to the Commerce City Sales and Use Tax. A vendor may elect to include the tax in the selling price of the drink or to add the tax to the price of the drink. Once having made the election he must continue to impose and collect the tax in the manner elected.
- (2) In the case of package sales the tax must be added to the total selling price.
- (3) A special accounting basis is allowed when the above items are sold by the drink. On retail sales by the drink, the tax may be included in the sales price.
- (4) Vendors dispensing liquor, wine or beer by the drink who purchase ingredients which they use in mixing the drinks are not required to pay Sales Tax on the purchase of such ingredients.

## **AMUSEMENT DEVICES, AMUSEMENT PLACES, CARNIVALS, ETC.**

### **Regulation 20-S.I.5**

The tax will fall on the total amount charged for the use of any amusement devices including bowling, billiard, pinball, carnival ride, or any other such devices which are non-coin operated, utilized in the city limits for which a charge is made. Tax will fall on the gross proceeds of all such charges for utilization of such devices regardless that the charge falls below the minimal taxable bracket on which the vendor assesses the tax. These devices are also subject to the Use Tax on their subsequent rental or lease to other persons or on the original purchase if utilized by the owner for his own personal use or non-rental business use.

**Gifts and Premiums as Applied to Games Dispensing Prizes to the Customer.** - The operator of a game who delivers a prize to the customer is regarded as the retailer of the merchandise delivered as prizes, and the tax applies to the operator's total gross receipts, derived from such merchandise transfers as well as on the rental of the tangible property utilized in such games.

Similarly, the tax applies to the entire receipts from operators of "grab bag" concessions by which the customer always receives some tangible personal property.

## **AUCTIONEERS AND AUCTIONS**

### **Regulation 20-S.I.6**

Every factor, auctioneer, or agent acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, custom house permit, or warehouseman's receipt for delivery of any tangible personal property, or entrusted with possession of any such personal property, for the purpose of sale, shall be deemed to be the owner thereof, and upon the sale of such property shall be required to file a return and pay the tax thereon. A sale by a factor, auctioneer, or agent, when acting for a known or disclosed and properly licensed principal, shall be taxable to the principal. The same rules apply to lienholders, such as pawnbrokers, mechanics and artisans. In cases of retail sales by auctioneers at their established auction houses, sales yards or other places of business, the gross receipts are taxable regardless of how the property may have been acquired or by whom it may be owned. A Commerce City Sales and Use Tax License is required.

Persons engaged in the business of making retail sales at auction of tangible personal property owned by such person or others are retailers, and are, therefore, required to hold sellers' permits, except if acting for a known or disclosed principal licensed to sell such tangible personal property.

The tax is measured by the gross receipts from such sales. The amount upon which tax is computed includes the amount charged for merchandise returned by a customer at an auction sale, if the sale is made under an agreement or understanding at the time of sale that the property will not be delivered or that any amount paid will be returned to the bidder.

## **AUTOMOTIVE VEHICLES & BICYCLE - SALES, LEASES, USE, REPAIRS, ETC.**

### **Regulation 20-S.I.7**

Motor vehicle dealers having demonstrator, company, and executive vehicles where the proprietor, salesmen or employees use such vehicles for personal or business purposes or demonstration in addition to display are liable for payment of Use Tax upon the fair market price of the vehicle. Where a series of vehicles are so used for relatively short periods of less than six months, the dealer shall be liable for fair value of one vehicle for each twelve month period for each owner, each employee or each salesman to which such vehicles are furnished. This cost shall be the weighted average of the fair market value of all vehicles so used during the twelve month period. And in the absence of the showing that the motor vehicle dealer voluntarily made such payment then the tax will fall on the fair market value of each and every vehicle "found" in use.

Parts and accessories for automotive vehicles are considered to be of the same nature as other tangible personal property delivered and accordingly are taxable. The repair and installation of air conditioning equipment, automotive, body repair and painting, brake service, transmission service, electric service, engine service and repair, radio and stereo service and repair, installation and repair of seat covers, carpets, tops, and upholstery, undercoating and rust proofing as well as any other automotive services and installation are taxable to the full amount of the charge made to the customer with deductions therefrom allowed on account of service or labor, if such service or labor is separately itemized to the customer on his sales invoice.

The charge made for automotive diagnostic services insofar as machinery and equipment was utilized in such services is a taxable service under section 20-4-7 and 20-4-1 of this code.

Automobile dealers, garages, repairmen, etc., may purchase tax free only so much of the tangible personal property that they resell. This exemption does not apply to machinery, equipment and tools etc. which they purchase for their own general business use and do not hold for resale.

Auto towing and wrecking or hauling service is taxable in full, under section 20-4-7 of this Code or to that degree authorized by the director.

Except as exempted in Section 20-5-C and elsewhere in this Code, the Sales Tax or Use Tax is imposed on every sale, trade or lease involving payment of money, evidences of indebtedness or other consideration of new or used motor vehicles within Commerce City, whether the seller is engaged in business or is making an isolated sale or trade.

Aircraft and other classes of automotive vehicles are taxable. (Refer also to Section 20-4-8)

Bicycle sales and rentals and leases of bicycles are taxable to the full amount of the charge to the customer. The repair of bicycles is taxable as in automobiles above, to the full extent of the charge to the customer with deductions for labor or service if such service or labor is separately itemized to the customer on his sales invoice.

## **BARBERS, BEAUTY SHOP OPERATORS**

### **Regulation 20-S.I.8**

Barbers, beauty shop operators and other personal service proprietors, are the consumers of the supplies and other property used in performing their services. They are retailers, however, of any such supplies or of used articles or other tangible personal property which they sell to consumers in the regular course of business.

Barber shops and beauty parlors are primarily engaged in rendering services and their sales of services are usually not considered subject to the sales tax. Sales of tonics, skin preparations, and other cosmetics when made by the bottle, jar or package are sales of tangible personal property and subject to the tax. However, unless the barber shop or beauty parlor maintains an inventory of a value of \$50.00 or more, it will be deemed to be isolated or casual and not a regular engaging business, and barber and beauty supply houses are authorized to collect the Sales or Use Tax on all sales to such barber shops and beauty parlors or the shops and parlors must report the Use Tax. If the inventory of package goods which is to be resold is in excess of \$50.00, however, the shop must have a Sales Tax License. Shops engaged in sales of wigs are required to obtain a sales tax license and collect the tax on such sales.

## **BILLIARD PARLORS**

### **Regulation 20-S.I.9**

The Commerce City Sales and Use Tax must be charged for the utilization, lease, or rental of billiard tables, cues and balls based on the full amount charged for such use, whether the charge for such use, rental, or lease is referred to as a "service fee", "admission fee", or any other named charge whatsoever.

## **BOWLING ALLEYS**

### **Regulation 20-S.I.10**

The amount charged for the utilization, lease or rental of bowling alleys and pinsetters for bowling balls and for bowling shoes rented, sold, etc., at such places, is taxable on the full amount charged to any customer. Bowling by the "Line" is taxable in full as a rental, above, in lieu thereof of charging the tax to the customer on such "Line" charges, the owner must remit the tax on his lease payments for the alleys, pinsetters, etc., which latter charge is normally based on a percentage of total "Line" charges that the proprietor charges his customers.

## **BURGLAR ALARM, FIRE ALARM SYSTEMS**

### **Regulation 20-S.I.11**

The purchase price of security systems are taxable whether the system is leased, rented or owned. Any amount paid or charged for labor required for installation of a security system is not subject to tax, if separately itemized on the purchase invoice.

Security system services are taxable including the amount paid or charged for electronic monitoring whether the system is leased, rented or owned. In providing such security system services, all materials and equipment that are located in the City are subject to City use tax, if the requisite sales tax has not been paid. If title to the material or equipment is transferred to the

customer, then the material or equipment are considered separate and distinct retail transactions from charges for security system services.

## **CATERERS - TRUCK VENDING OF PREPARED FOODS**

### **Regulation 20-S.I.12**

All Sales of Prepared Foods from Trucks in this City are Taxable.

In the event that adequate tax accounting (city liability) controls are not maintained by a vendor making sale of prepared foods through mobile (vehicular) food catering service; or

In the absence of agreement to report such city tax liability on a percentage basis (reflecting in-city and outside-city percentage of sales) between such vendor and the director;

Then the director shall levy the tax on the total gross receipts for all catering trucks being used in-city as shown by the vendor's records or on the best information available to the director.

## **CLEANERS - DRY CLEANERS - LAUNDRIES**

### **Regulation 20-S.I.13**

All cleaning devices purchased, rented or leased, by any person, is taxable to the full amount charged by any lessor or vendor as a sale of such coin operated or other cleaning or laundering devices.

Laundries and dry cleaners must pay the tax on the purchases of all cleaning material, machinery and equipment, etc., utilized in the general course of their business not held for resale in the form of rentals or leases of that equipment, etc., and additionally must charge the tax on any sales, rentals, or leases, of other tangible personal property sold. Any linen supply service must charge the tax on the full amount charged to the customer for such service rendered.

## **COMMON, CONTRACT & COMMERCIAL CARRIERS, ETC.**

### **Regulation 20-S.I.14**

Resident and non-resident Common, Contract and Commercial Carriers for hire, including but not limited to package delivery service companies, trash pickup and hauling service companies, freight and materials hauling and freighting service companies, storage, express and transfer service companies and all other trucking companies, and also including companies hauling and freighting their own products and not for hire, must pay the tax on all their purchases, rentals and leases of tangible personal property delivered in this city, and on their use, storage, distribution and consumption of tangible personal property not otherwise exempted under this Code.

Non-resident and resident Common, Contract and Commercial Carriers are subject to the tax on all their purchases of tangible personal property which is delivered in this City, except as exempted from the tax under this Code.

Except as exempted under this Code, resident and non-resident Common, Contract and Commercial Carriers are subject to the tax on all their rentals and leases of tangible personal property, including automotive vehicles, when delivered in this City, to the full term and to the full amount of any original or renewed lease or rental contract or agreement, when original delivery of the tangible personal property, under question, was given in this City.

Except as exempted under this Code, rentals, leases or sales of tangible personal property by any Common, Contract or Commercial Carriers, including, but not limited to, storage and locker rental services, sale of storage or other containers to taxable persons, are taxable to the full amount charged to such customer.

Resident common carriers referenced above must pay the Sales and Use Tax except if otherwise exempted under this Code on all their purchases of tangible personal property (1) where delivery is taken in the City, (2) where there is use, distribution or consumption in the City, or (3) where there is such storage in the City which terminates the flow of shipment of such property in interstate commerce. The tax is due and payable even though there is a subsequent shipment of such tangible personal property outside the City for actual use outside the City by the same common carrier at another of its branches or locations.

Common, Contract and Commercial Carriers, etc., as above, hiring individuals and leasing or renting those individual trucks and other equipment must pay the sales or use tax on such leases and rentals unless otherwise exempt under this Code.

Any Common, Contract or Commercial Carrier who, after being notified of a "non-complying" vendor status, (a non-complying vendor being a person who has failed to comply with the licensing and tax collection and/or remittance provisions of this Code) and who shall continue to deliver in this City any tangible personal property sold at retail by any such vendor, shall be considered in violation of this Code in aiding or abetting another to avoid the tax and shall be subject to the penalties provided and the tangible personal property so carried or delivered to this City for a non-complying vendor shall be subject to distraint warrant.

The notice to the common carrier may take the form of listings furnished as to complying vendors, i.e. Commerce City licensed vendors authorized to engage in business and sell at retail in this City.

## **CONSTRUCTION AND CONTRACTORS**

### **Regulation 20-S.I.15**

Unless specifically exempt, all construction within the City is taxable including that construction performed by a contractor on behalf of an exempt institution or a governmental, religious, charitable, private or any other type owner. The contractor working on such construction projects is subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored or consumed on those projects.

#### **A. General Definitions**

(1) The term "**contractor**," as ~~used herein~~ defined in Section 20-3-25, includes both general contractors and subcontractors and includes contractors engaged in such building trades as carpentry, bricklaying, cement work, steel work, plastering, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air conditioning, road and parking lot construction, painting and interior decorating.

(2) The term "**construction contract**" as used herein means a contract for erecting, remodeling, or repairing a building or other structures, roadways, or parking lots on land and includes lump-sum, cost-plus, and time-and-material contracts. The term "construction contract" does

not include a contract for the sale and installation of furniture, business machinery and equipment.

(3) The term "**materials**" as used herein means tangible personal property which when combined with other tangible personal property loses its identity to become an integral and inseparable part of the completed structure, roadway or parking lot. "Materials" includes such things as:

|                                 |                                  |                     |
|---------------------------------|----------------------------------|---------------------|
| Asphalt                         | Lead                             | Roofing             |
| Bricks                          | Lime                             | Sand                |
| Builder's hardware              | Lumber                           | Sheet metal         |
| Caulking material               | Macadam                          | Steel               |
| Cement                          | Millwork                         | Stone               |
| Concrete                        | Mortar                           | Stucco              |
| Conduit                         | Oil                              | Tile                |
| Electric wiring and connections | Paint                            | Wall board          |
| Flooring                        | Paper                            | Wall coping         |
| Glass                           | Piping, valves and pipe fittings | Wall paper          |
| Gravel                          | Plaster                          | Weather stripping   |
| Insulation                      | Putty                            | Wire netting/screen |
| Lath                            | Reinforcing mesh                 | Wood preserver      |

**Note:** After completion of construction of any structure and in the event of any subsequent sale of such structure, *NO* City Sales or Use Tax shall apply to such transfer on the "materials" incorporated into such structure because of the inseparable nature of the "materials" in the real property.

(4) The term "**fixtures**" as used herein means things which are accessory to a building and which do not lose their identity as accessories when placed or installed. "Fixtures" includes such things as:

|   |  |
|---|--|
| Air conditioning units                          | Lighting fixtures                      |
| Awnings and venetian blinds                     | Plumbing fixtures                      |
| Burglar alarm and fire alarm fixtures           | Refrigeration units                    |
| Cabinets, counters, and lockers (prefabricated) | Signs                                  |
| Elevators, hoists, and conveying units          | Telephone switchboards and instruments |



Furnaces, boilers, and heating units

Vault doors and equipment

**Note:** After completion of construction of any structure and in the event of any subsequent sale of such structure, City Sales and Use Tax will apply to such transfer on the "fixtures" included at such structure that do not lose their identity as accessories when placed or installed including the above, regardless that if such fixtures were removed from the real property incidental but reparable damage would occur to the real property.

The tax shall also apply to the sale, rental or lease, in place, of such fixtures to any person.

(5) The term "**furniture and business machinery and equipment**" as used herein means property to which each of the following conditions apply:

- (a) It is not used by the contractor in making the improvements (as distinguished from construction machinery, equipment, tools and supplies, such as steam shovels, cranes, trucks, and hand or power tools, actually used to perform construction work.)
- (b) It is either not attached to the realty or, if attached, is readily removable as a unit (as distinguished from "fixtures".)
- (c) It is installed for the purpose of performing a manufacturing operation or some other function not essential to the structure itself.

Examples of "**Machinery and Equipment**" are:

- (a) Furniture, appliances, carpets, and drapes, etc.
- (b) Lathes, drills, presses, cranes, and other machines and apparatus which may be fastened to the realty but which can be removed without damage to the structure or without substantially impairing its use.
- (c) Portable machines, equipment and tools
- (d) Vehicles

**Note:** After completion of construction of any structure and in the event of any subsequent sale of such structure, City Sales and Use Tax will apply to such transfer on the "furniture and business machinery and equipment" (including trade fixtures) included at such structure as either not "attached" to the realty or, if "attached", is readily removable as a unit.

The tax shall also apply to the sale, rental or lease, in place, of such furniture and business machinery and equipment to any person.

(6) The term "**construction machinery, equipment, supplies and tools**" means any tangible personal property sold, leased, rented or used by the contractor or any person in making improvements or performing services. This term includes such property as:

Bulldozers  
Cranes  
Compressors  
Forklifts

Graders  
Power tools  
Steam shovels  
Trucks

and all other equipment, supplies and tools used in the construction industry.

**Note:** The City Sales and Use Tax is payable on the total purchase price paid or charged for any materials, fixtures and supplies sold and delivered or used in the City. Where a contractor or any person buys and takes delivery of any materials, fixtures and supplies or uses machinery and equipment in the City pursuant to a contract or agreement, the City Sales or Use Tax is due even though ultimate utilization is to be outside the City. The contractor purchasing and the vendor selling and delivering such items shall be liable for such tax remittance but if such contractor and vendor fail to make payment thereof, the person receiving performance under the contract shall be ultimately liable for the tax remittance. Provided, however, neither the Sales nor the Use Tax shall be payable to the City in regards to the following:

- (a) The sales tax shall not apply to the sale of construction and building materials if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid to another city or county.
- (b) The use tax shall not apply to the storage of construction and building materials in the City. However, the purchase of such materials in the City or the use of such materials in the performance of a contract in the City are taxable events in the City and those events are taxable by the City regardless of whether storage occurs in conjunction with such purchase or use of such materials in the City.

**B. Materials Used by Contractors.** - Contractors are the consumers of materials used by them in fulfilling construction contracts and the tax applies to the sale of such materials to the contractors.

If, however, in the case of a time-and-material contract the contractor bills his customer an amount for "sales tax" computed upon his marked-up billing for materials, it will be assumed, in the absence of convincing evidence to the contrary, that he regards himself as selling the material so billed, and tax will apply to the amount of the billing for materials.

Retailer-contractors entering into lump sum contracts with tax exempt entities cannot treat the agreement as a time and material contract. (refer to sales to governments)

**C. Fixtures Furnished and Installed by Contractors.** - Contractors are retailers of "fixtures" which they furnish and install and tax applies to the retail selling price thereof; which, in the case of lump-sum construction contracts, is regarded as the cost price of the fixtures to the contractors. If the contractor is the manufacturer of the fixtures, the retail selling price thereof is the prevailing price at which similar fixtures in similar quantities ready for installation would be sold to contractors.

**D. Materials Used by Manufacturers or Fabricators.** - The use or consumption of tangible personal property, including the installation into or the affixing to real property of the manufacturer or fabricator or of another of items of tangible personal property manufactured or fabricated by the manufacturer or fabricator of the tangible personal property shall be taxable as provided in Section 20-4-1 of this Code.

**E. Other Sales by Contractors.** - Tax applies to all retail sales by contractors, including the furnishing and installation of fixtures (see above), over-the-counter sales, and "jobbing sales". "Jobbing sales" are repair and replacement jobs in which the materials and fixtures are billed at retail.

**F. Supplies and Tools.** - Contractors are the consumers of supplies such as oxygen, acetylene, gasoline, acid, thread-cutting oil, and tools and parts for tools, which they use in their business, and the tax applies to the sale of such supplies and tools to contractors.

**G. Construction Materials, Machinery and Equipment Uses** - The total purchase or sales price charged to or by any contractor for the use of any construction materials, machinery and equipment, as part of a total contract price, including a lump sum contract and mark-ups, is taxable in full provided, however, if the labor utilized in conjunction with such construction material, machinery and equipment, including a lump sum contract and mark-ups, is separately stated or is determined by the Director of Finance, the charge for the labor shall be exempt. The tax is payable regardless that at all times the construction material, machinery and equipment is furnished, the control of the operation resides in the one furnishing such service and further regardless of whether the construction material, machinery and equipment are furnished as a part of a total contract for a job or project.

This would include the total charge made to any person for the providing of the following equipment, operator services and labor thereof and any materials, fixtures, etc., supplied in conjunction therewith.

- Asphalt and concrete paving machines and materials
- Compressors, power tools, forklifts, etc. services and rentals
- Crane service and materials
- Pile drivers, caissons, forms and materials
- Ready-mix hauling and materials
- Steam shovel service and materials
- Truck hauling service and materials

**H. Application of the Tax to Individual Building Contractors.** - This section explains the provisions of the Sales and Use Tax law to the operation of construction contractors. Building contractors come within the definition of construction contractors.

The operations of building contractors may be considered under three classes of contracts and five operational categories.

The classes of contracts are Lump-Sum, Cost-Plus, and Time-and-Material. In each case the contractor is regarded as the consumer of "materials" and the retailer of "fixtures" as these items are defined in 20.S.I.15A(3) and (4).

1. The contracting for the erection and installation of buildings on land.
2. The repair and/or remodeling of existing buildings.
3. The sale of buildings without installation, i.e., the packaged prefabricated buildings in "knock down" condition.
4. The erection, installation and leasing of buildings.
5. The sale and installation of machinery and equipment.

The tax applies to the sale or purchase of tangible personal property used in the above operations on lump-sum and cost-plus construction contracts as follows:

**I. Contract for the Erection and Installation of Buildings on Land.** - As to tangible personal property which is defined as materials in 20.S.I.15A(3), the tax is due upon the cost of such materials to the contractor in addition to the charge allocated for use of any construction machinery and equipment. The cost to the contractor for materials includes charges for processing or fabricating material furnished by the contractor or by others.

As to tangible personal property which is defined as fixtures in 20.S.I.15A(4), the contractor must pay tax on the retail sale price of the fixtures. If the fixtures are fabricated in whole or in part by the contractor, the tax is due on the prevailing price at which similar fixtures in similar quantities ready for installation are sold to other contractors. Where a construction contract provides for a specific price for the fixtures, the tax applies to that specific price.

**J. Property which is Used in the Repair or Remodeling of Existing Buildings.** - In this category, the tax applies to the cost of the materials used in the remodeling or repair work and to the selling price of the fixtures in the manner described in "Contract for the Erection and Installation of Buildings on Land" above.

**K. Sale of Packaged Prefabricated Buildings without Installation.** -The tax applies to the total sales price of buildings sold without installation or erection. This represents a sale of tangible personal property and not a contract for the improvement of real property.

**L. The Erection, Installation, and Leasing of Buildings.** - Where a contract is taken for the erection and installation of a building on the customer's land and the payment thereof is received on the basis of an agreed number of lease installments, the tax applies to the fixtures and materials in the same manner as a regular construction contract for the erection and installation of a building. (See "Contract for the Erection and Installation of Buildings on Land" above.)

**M. Sale and Installation of Machinery and Equipment.** - A contract for the sale and installation of machinery and equipment is a sale of tangible personal property and tax applies to the total sales price of machinery and equipment installed in the buildings as a part of the contract. The tax does not apply to installation charges separately stated. As to "machinery and equipment" in Government Contracts, see below.

**N. Subcontractors.** - Where a prime contractor engages a subcontractor to fulfill all or part of his contract to improve real property, the subcontractor is the retailer of, and is responsible for reporting the tax on the sale of all fixtures furnished and installed by him. He is the consumer of materials furnished and installed by him, and the tax applies to the sale of the materials to him exactly as if he were the prime contractor.

In the event that any prime or general contractor or subcontractor fails or refuses to pay any sales or use tax due, the general or prime contractor, and ultimately the owner or owners of the property benefited by the work, will be held liable for any tax due.

**O. Freight.** - In making purchases subject to tax, the freight charges by the seller to the contractor may be subject to tax. Even though separately stated from the charge for the property purchased. Refer to Code Section 20-4-7 and 20-3-44 as to liability for the Tax on Freight Charges.

**P. Sales to Government.** - Where a contract with a government is for the construction of improvements on or to real property, the tax applies to the cost of the tangible personal property purchased for the use in the performance of the contract including materials used in manufacturing fixtures, to the cost of fixtures furnished in the performance of the contract and to the use of machinery and equipment in the performance of the contract.

If a building is sold to the Government without erection or installation, no tax is due on the sale, it being an exempt sale to the Government. Sales of "machinery and equipment" to the Government are not subject to tax.

Either the Sales Tax or the Use Tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies and equipment) to contractors or subcontractors for use in the performance of contracts with the Governments for the construction of improvements on or to real property in this City. The fact that the contract may provide principally for the manufacture or acquisition of tangible personal property is immaterial.

Tax does not apply to sales of "machinery and equipment" to contractors or subcontractors for installation on Government jobs. As used herein, the term "machinery and equipment" means property to which each of the following conditions apply:

- (1) It is not used by the contractor in making the improvements (as distinguished from construction machinery, equipment and tools, such as steam shovels, cranes, trucks, and hand or power tools, actually used to perform construction work, see above 20-S.I.15A(6)).

- (2) It is either not attached to the realty, or, if attached, is readily removable as a unit (as distinguished from "fixtures",) (See above 20-S.I.15A(4))
  - (3) It is installed for the purpose of performing a manufacturing operation or some other function not essential to the structure itself.
  - (4) Title to the property passes to the Governments before the contractor makes any use of it.
- (Examples of machinery and equipment are shown in 20-S.I. 15A(5))

## **Q. Methods of Payment - Construction Sales and Use Tax for the City of Commerce City**

### **1. "Estimated Percentage Basis" method is offered for ease of remittance.**

The prepayment of tax on the "Estimated Percentage Basis" that may be elected by the contractor and approved by Commerce City (based on the percentage of taxable sales and purchases as that amount bears to the total gross contract price for the job site) will apply to only the following inclusions at the job site:

A) Materials (refer to 20-S.I.15A(3)) and;

B) Fixtures (refer to 20-S.I.15A(4))

In the absence of agreement to the contrary between the taxpayer and the Director of Finance, the percentage of such valuation on which the tax is based for purposes of the "Estimated Percentage Basis" shall be sixty percent (60%) of the total gross contract for the job.

The tax regardless of any prepayment on the above will still be due on all sales, rentals, leases and uses on that job site on the following:

C) Use of furniture and business machinery and equipment (refer to 20-S.I.15A(5)); and

D) Construction machinery, equipment, supplies and tools (refer to 20-S.I.15A(6))

The vendor shall collect or remit such tax due on C and D above and in the event the vendor is not licensed to collect such tax, then the contractor shall be liable for such taxes due and shall report such tax due for the specific job site on the tax form prescribed.

### **2. Alternative "Actual Basis" method of reporting tax offered: Submission of monthly returns, Job Cost Report filings, etc.**

In the event that tax is not prepaid under "Estimated Percentage Basis" (1 above), then each and every general, prime, sub and retailer contractor involved on that job site will report the tax due directly to the city on the specific job site tax form prescribed for all sales, purchases, leases, rentals and uses of the following:

A) Materials (refer to 20-S.I.15A(3)) and:

B) Fixtures (refer to 20-S.I.15A(4)) and:

C) Furniture and business machinery and equipment (refer to 20-S.I.15A(5)) and:

D) Construction machinery, equipment, supplies and tools (refer to 20-S.I.15A(6))

Such reports required in this paragraph 2 will be by specific job site and may not be co-mingled with other reports required of the contractor or retailer.

Failure to report all tax due as required for any job site will result in the enforcement action prescribed under this code.

## **R. Methods of Collection-Construction Sales and Use Tax for the City of Commerce City**

### **1. Supplier will not levy City Tax**

Regardless that any contractor prepays tax due the City on the "Estimated Percentage Basis" (refer to 20-S.I.15(1) Method of Payment - "Estimated Percentage Basis" method) or elects to pay the tax directly to the City on the "Actual Basis" (refer to 20-S.I.15(2) Alternative "Actual Basis" method of reporting, the supplier shall not levy any tax on any contractor for any job site located within the corporate limits of the City on the following:

A) Materials (refer to 20-S.I.15A(3)) and;

B) Fixtures (refer to 20-S.I.15A(4))

This exemption applies only when the contractor furnishes to the supplier and the supplier records on the sales invoice the job site address, which address must be within the corporate limits of the City to be exempt from collection of the City Tax by the supplier.

Any contractor or supplier who shall give or record a false job site address in order to evade the tax shall be deemed guilty of fraud and be subject to penalties prescribed by this Code.

### **2. Supplier will levy City Tax**

The supplier will levy the tax on all sales, leases, and rentals delivered in this City to the contractor or his agent of the following:

A) Materials (refer to 20-S.I.15A(3)), and

B) Fixtures (refer to 20-S.I.15A(4))

When such materials and fixtures are for use outside the corporate limits of the City but the delivery and/or sale are made in the City, then such sale is taxable except if such materials and fixtures are picked up by the purchaser and the purchaser of such materials and fixtures presents to the supplier a building permit or other documentation acceptable to the City of Commerce City evidencing that a local use tax has been paid elsewhere or is required to be paid elsewhere as provided in Section 29-2-105(2) of the Colorado Revised Statutes. The taxpayer must clearly show compliance with this exemption in order to claim the benefit thereof.

The supplier will additionally levy the tax in all cases for all sales, rentals and leases delivered or used in this City for the following regardless that the contractor prepaid a tax on the building materials and fixtures upon issuance of the City Building Permit:

C) Furniture and business machinery and equipment (refer to 20-S.I.15A(5)), and

D) Construction machinery, equipment, supplies and tools (refer to 20-S.I.15A(6))

## **CONTAINER MANUFACTURERS**

### **Regulation 20-S.I.16**

All purchases of tools, equipment and supplies and all other tangible property except those expressly exempted under Section 20-5-B-(2) of this Code are taxable to such manufacturers or compounders.

## **DATA SERVICES – COMPUTER HARDWARE/SOFTWARE – DIGITAL MEDIA**

### **Regulation 20-S.I.17**

The internalized instruction code which controls the basic operations (i.e. arithmetic and logic) of the computer, causing it to execute instructions contained in systems programs, is an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are taxable. It is immaterial that the vendor does or does not charge separately for such internal code systems.

### **Computer Hardware**

Computer hardware, peripheral equipment, parts and accessories are taxable as tangible personal property regardless whether they are purchased, leased or rented.

### **Computer Software**

Computer Software is a set of instructions which enable a computer to perform specific functions.

A) The following software is taxable when delivered electronically or by any other method:

- 1) System programs that control the hardware itself and allow it to compile, assemble and process application programs.
- 2) Application programs that are purchased, leased, rented or licensed to perform



business functions, or control or monitor processes.

- 3) Pre-written programs (canned programs) that are either system programs or application programs not written specifically to meet requirements of an individual customer.
- 4) Custom programs that do not qualify as being exempt as described in Section B. Subsequent sales of customized software will be treated as prewritten (canned) software and taxed accordingly.

#### 5) Software as a service

B) The following software is not taxable:

- 1) Custom software that meet all of the following elements:
  - a. A transfer of ownership (by sale, lease, rental or license) or right to use the software does not exist, and
  - b. Preparation and design of the software for the customer's use requires an analysis of the customer's requirements by the vendor and the program is written to meet the customer's specific requirements.

**Digital Products** (including, but not limited to: Audio Works (music) – Digital Audio-Visual Works (movies, music videos, TV shows) – Digital Books – Digital Codes – are all taxable when delivered electronically or by any other method.

Retail sales of digital codes that provide the purchaser with a right to obtain digital products are taxable. Sales of such digital products are subject to tax when the purchaser receives a permanent right of use, a right of use which terminates on some condition, and a right of use conditioned upon continued payments.

**Digital audio works** means products that result from the fixation of a series of musical, spoken, or other sounds. Products that are taxable within the definition include recorded or live songs, music, readings of books or other written materials, speeches, and ringtones or other sound recordings.

**Digital audio-visual works** means products consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Products within the definition include movies, motion pictures, musical videos, news and television programs, and live events.

**Digital books** means literary works expressed in words, numbers, or other verbal or numerical symbols or indicia which are generally recognized in the ordinary and usual sense as "books". The definition includes works of fiction and nonfiction and short stories.

**Digital code** means a code which provides a purchaser with a right to obtain one or more taxable digital products delivered electronically. A digital code may be obtained by any means, including e-mail or any other means, such as plastic cards or certificates imprinted on other products, regardless of its designation, such as a “song code”, “video code”, or “book code”.

### **Software Maintenance Agreements**

A) The following [software](#) maintenance agreements are taxable:

- 1) The maintenance agreement is mandatory to maintain the right to use the program.
- 2) The maintenance agreement includes updates to the programs or the rights to updates and modifications.

B) The following [software](#) maintenance agreements are not taxable:

- 1) The maintenance agreement is for technical support only, is not mandatory and does not entitle the customer to program revisions.

### **Computer and Data Services**

Computer and data services include services rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel and computer and data processing functions.

A) The following computer and data services are taxable:

- 1) Charges for a physical product that results from computer and data services if the physical product contains pre-existing information. A tax will be assessed on products such as mailing lists or other reports without regard to whether the list or report is transferred electronically or any other method.
- 2) Charges for an electronic product that can be stored or downloaded which results from computer and data services that totals, organizes or analyzes existing data.

B) The following computer and data services are not taxable:

- 1) Computer and data services where the charges are for manipulation of client-owned data, such as payroll services and computer accounting services.
- 2) Data conversion services where the charges are for the conversion of client-owned data from one media to another or from one character format to another.

### **Miscellaneous Non-Taxable Services**

The following activities consist of the development of ideas, concepts and designs and are therefore regarded as non-taxable services:

- 1) Designing and implementing computer systems (i.e., determining equipment and personnel required and how they will be utilized.)
- 2) Designing storage and data retrieval systems (i.e., determining what data communications and high-speed input-output devices are required.)
- 3) Consulting services (i.e., study of all or part of a data services system.)
- 4) Feasibility studies (i.e., studies to determine what benefits would be derived if procedures were automated.)
- 5) Evaluation of bids (i.e., analysis of proposals for equipment, software, maintenance, etc.)
- 6) Providing personnel (technicians, analysts and programmers).

### **Miscellaneous Taxable Computer and Data Services and Supplies**

The following items are taxable:

- 1). Books and training materials furnished for a specific charge obtained by any means.
- 2). Charges for use of equipment (computer time) and other property.
  - a. An equipment use charge (computer time) includes a contract by which a person secures for consideration the use of equipment (computer time), if the person or his employees, operate the equipment or direct and control its operation.
  - b. The transaction of leasing, renting or using the equipment (computer time) which is not on his premises is considered to be a separate and distinct transaction from original purchase, lease or rental by the person with the equipment on his premises. Both transactions are taxable to the full amount of the charge made.

### **DENTISTS AND DENTAL LABORATORIES**

#### **Regulation 20-S.I.18**

Dentists are consumers of the materials, supplies, products and other tangible personal property which they use in performing their services. Tax, accordingly, applies to the sale of the tangible personal property to them.

Dentists are exempt from the tax on prosthetic devices and on prescription drugs for humans which they may administer to their patients in the regular course of the patients' treatment.

### **DISTRIBUTING AND "WELCOMING" SERVICES**

#### **Regulation 20-S.I.19**

Any person who owns the circular, samples, etc., distributed are required to pay the tax on the cost of printing or on the product distributed.

Any such distributing service or any person who distributed the circulars, etc., or products of others, the ownership of which does not reside in the distributor, and who fails to collect and remit any tax due the city from such tangible property owners shall be considered in violation of the code in aiding or abetting another to avoid the tax.

Any such service businesses selling printed matter, products or other tangible personal property to any person for distribution, use, storage or consumption in this city or delivering in this city such property must license, collect, and remit the tax.

### **DISTRIBUTION** **Regulation 20-S.I.20**

When business is solicited within the City of Commerce City by catalogues or by other advertising media, the resulting sales made to Commerce City residents are taxable no matter where the order is approved. When such catalogues or brochures are sold, the sales transaction is taxable. If such catalogues are given away, the cost of the catalogues must be reported and use tax paid to the City based on this cost.

Catalogues, brochures, etc., that are mailed from the City of Commerce City to customers outside the City are subject to the Commerce City Sales and Use Tax for their use and storage in the City of Commerce City based on the cost of such brochures, catalogues, etc. In the event the owner of such materials does not have a place of business within the City and does not assume responsibility to pay such Use Tax due on such materials which are mailed to the recipient from this City, then the person so mailing such materials from this City, whether acting as a mailing service, printing service, etc., will be held liable for such tax remittance.

Stamp companies are required to pay the Sales or Use Tax upon the cost of all trading stamps, stamp books, etc., which are stored, used and distributed or otherwise consumed in Commerce City, which are not held for taxable resale.

The sale of trading stamps to vendors who later give the stamps to customers as a premium for their trade, and which stamps may later be “traded-in” for articles of tangible personal property, is taxable to the vendor so purchasing such stamps. Upon redemption or “trading-in”, the Sales Tax shall be collected on the fair market value of the item for which the stamps are redeemed or traded.

When advertising gifts, shoppers’ guides, catalogues, directories, or other property, including discount or coupon redemption books, are given away as prizes, premiums or for goodwill purposes there is no charge to the recipient, such items are taxable at the cost price to the distributor. When there is a charge made to the recipient upon the distribution of such items, the tax shall be paid by such recipient to the distributor for remittance to the City as a retailer of tangible personal property.

The sale of gift certificates is not subject to tax. However, when the certificate is exchanged, in whole or in part, for tangible personal property, that transaction is a sale and taxable as such at the full fair market value of the article received.

## **FABRICATING, MANUFACTURING, ASSEMBLING, INSTALLING, REPAIRING, RECONDITIONING AND PROCESSING PROPERTY**

### **Regulation 20-S.I.~~2021~~**

**General rules.** - In general, tax applies to costs for producing, manufacturing, fabricating, processing, assembling, installing, printing or imprinting of tangible personal property as a finished product including labor, materials and services regardless that the consumer may furnish either in-house or by purchase or contract with third parties the materials, labor or services used in the producing, manufacturing, fabricating, processing, assembling, printing or imprinting the finished product.

**Operations included** - repairing and reconditioning, etc. included. Producing, fabricating, manufacturing, assembling, installing and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitute the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced, if the "vendor" neglects or refuses to itemize the materials utilized portion of the invoice in such repair or reconditioning from the labor or service portion of that billing in any total charge to the ultimate consumer.

The sales tax must be paid on the full purchase price of articles made to order or remade for the customer, under the preceding conditions precedent. The customer may select the materials and designate the service desired. The gross value of all the materials and labor together with the profit thereon are included in the taxable sales price to a purchaser. This applies to any article produced, manufactured, fabricated, processed, assembled or installed for sale at retail.

## **FLORISTS**

### **Regulation 20-S.I.~~21~~22**

All sales at retail by a florist are taxable and all orders taken by florists within Commerce City and telegraphed to florists outside the City are taxable. When a florist within Commerce City receives a telegraphic order from a florist outside Commerce City, the sale is exempt. When a

florist has more than one location in the City, inter-office transactions and deliveries are deemed not to be telegraphic orders.

## **FOUNDATIONS AND TAX-EXEMPT INSTITUTIONS**

### **Regulation 20-S.I.~~22~~23**

Exempt Institutions including foundations, educational, research, fund-raising and charitable organizations are taxable on all sales made to any customer. These organizations are subject to the tax collection provisions for any tangible personal property sold, leased, rented or used in the City.

Fund raising organizations are regular business enterprises subject to all the provisions of the City Sales and Use Tax Code and the cost of all materials, equipment and supplies used by such organization is taxable, and they must collect and remit the tax on any retail sales they may conduct.

## **FRANCHISES**

### **Regulation 20-S.I.~~23~~24**

The use tax shall apply on taxable tangible personal property supplied under a franchise agreement. When both intangible property rights and tangible personal property are furnished under the franchise and the charges are not segregated, the use tax will apply on the entire franchise payment unless the tangible personal property is not the true object of the franchise and, although not segregated from the intangible personal property, is of nominal or insignificant value in relation to the total value paid for the franchise.

## **FURNITURE - SALES, LEASES, REPAIRING, REFINISHING, ETC.**

### **Regulation 20-S.I.~~24~~25**

Furniture sales, leases, rentals, and repairing, refurbishing, refinishing, and upholstering, are taxable on the full amount charged whether the property ownership is in the vendor or resides in the customer, to the full extent of the charge made for such services without any deduction therefrom on account of service or labor, in the event the vendor, on such repairs, etc., does not itemize separately materials used and labor charged as per rule stated in Section 20.S.I.20 and elsewhere herein.

## **GARAGED VEHICLES IN CITY**

### **Regulation 20-S.I.~~25~~26**

Any resident of Commerce City who purchases a motor vehicle, trailer or semi-trailer, etc., whether new or used, outside of the City for use within the City must pay the Use Tax of four and one-half percent (4.5%) on the purchase price of any vehicle upon registration of the said vehicle in Adams County. Any resident who registers a vehicle at an address other than his residence or place of business within Commerce City for the purpose of evading the Sales or Use Tax shall be considered in violation of the Code and subject to the penalties set forth herein. Vehicles registered outside of the City and owned by non-exempt persons are subject to the Use Tax when garaged or used for business in Commerce City. (Refer to Section 20-3-53 and 20-3-4.)

## **GOVERNMENTS - LICENSES - SALES**

### **Regulation 20-S.I.~~26~~27**

Any sales at retail, i.e., to the ultimate consumer, of tangible personal property requires the vendor to license with the City of Commerce City to collect and remit the Commerce City Sales and Use Tax whether that "vendor" is a governmental or any other entity whatsoever, public or private, to the same degree and with the same liability as any other Commerce City vendor. Sales to officers or employees of such government entities for their personal use are taxable. Purchases by students, faculty, employees and staff of schools and school districts are taxable.

## **GROCERIES**

### **Regulation 20-S.I.2728**

**A.** Food items taxable under the Commerce City Sales & Use Tax Code are the following:

- 1) All meals or food or food products consumed on the premises of the vendor.
- 2) All food products that are not for human consumption, including pet foods (but excluding from the tax, feed for livestock and poultry.)
- 3) All food products vended from any vending device.
- 4) All sales of any product for human consumption in liquid, powdered, granular, capsule, lozenge, or pill form; (a) which is described as a food supplement or dietary adjunct and to any such product. (b) which is described or designed to remedy specific dietary deficiencies or to increase or decrease one or more of the following areas for human nutrition: (1) Vitamins; (2) Proteins; (3) Minerals; (4) Caloric intake.
- 5) Consumable products, as an example, but not limited to, household cleaning, hardware, non-prescription drugs, paper, paper products, cosmetics, apparel, animal food and other items of tangible personal property sold, not properly classified as food for human consumption.
- 6) Food items containing marijuana whether designated as medical marijuana or not.

**B.** All food items for human consumption off the premises not included in A-(1) through A-(6) above are exempt from the Commerce City tax whether sold by a retail grocery store, supermarket, dairy, bakery, food home delivery service or roadside produce stand.

**C.** "Food for human home consumption" means food and food products sold in the form, unit and quantity which are customarily purchased and customarily require additional preparation for consumption in the home or place of domicile. (Refer to Section 20-3-28.) Food otherwise qualifying for human home consumption that is purchased by and delivered to businesses or employees for consumption at the workplace is subject to the Commerce City tax.

**D, "Food", as defined in Section 20-3-39, includes food and drink.**

**E. Any food, as specified in 7 U.S.C. section 2012(g), as such section exists on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the federal**



food stamp program is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

F. Any food, as specified in 42 U.S.C. section 1786, as such section exists on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants, and children is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

## **INSURANCE COMPANIES**

### **Regulation 20-S.I.~~28~~29**

Insurance companies and agencies must pay the City Sales or Use Tax on all tangible personal property purchased for use, storage, distribution or other consumption in the City. This includes Fair Market Value of tangible personal property used, consumed or stored in Commerce City by inter-company transfers.

## **LINEN SERVICES**

### **Regulation 20-S.I.~~29~~30**

Persons engaged in the business of furnishing linens and apparel to customers under an agreement which includes a continuous service to be rendered in the periodic cleaning of such articles, are deemed to be engaged in taxable rentals, and as such, must charge the Sales Tax on such rentals.

Items such as hand soaps, paper towels, toilet tissue, disinfectants, which are furnished under a service contract and are consumed where delivered by the linen serviceman are considered property sold at retail and the tax shall be remitted on the retail price of such property.

## **MORTICIANS, FUNERAL PARLORS, MEMORIAL DEALERS**

### **Regulation 20-S.I.~~30~~31**

Morticians are retailers of the tangible personal property furnished in connection with rendering their services, and tax applies to the sale by morticians of all tangible personal property so furnished.

Tax applies to the fair retail value of vaults, urns, caskets, shipping boxes, grave boxes, clothing, and "extras" or property furnished in addition to that customarily furnished with standard service. Tax with respect to other items of tangible personal property furnished shall be computed upon a 50% of the remainder of the charge for the funeral.

If the items of tangible personal property furnished are segregated in billings to customers and specific charges made therefor, tax applies to such charges.



Tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, and ministerial fees.

Pre-paid burial insurance plans are not taxable at the time of the purchase of the pre-need contract only if all funds paid for the plan are held in trust, under the laws of the State of Colorado, until the time of need. The sale at the time of the funeral service is subject to tax in the same manner as other funeral services. If the funds are not held in trust the transaction is taxable in full at time of purchase of pre-need plan.

**Memorial Dealers as Retailers.** - Memorial dealers are retailers of the tombstones, markers, and other memorials sold by them and also are retailers of the materials, such as cement, used in setting the memorial in the cemetery.

**Measure of Tax.** - Lump Sum or Separate Charge for Materials and Labor. - If the memorial dealer agrees to furnish a memorial and to set it in the cemetery for a lump sum, the tax applies to the entire amount charged. If a separate charge is made for the memorial and the materials used in connection with setting the memorial in the cemetery and an additional charge is made for the labor of setting the memorial in the cemetery, the tax does not apply to the charge for the labor of setting the memorial in the cemetery. However, no deduction may be made of the charges for cutting, shaping, polishing or lettering the memorial or for transporting the memorial to the cemetery.

**Cemeteries Constructing Foundations.** - When cemeteries construct the foundations upon which the memorial dealers place the memorials, and collect the charges for the foundations from the memorial dealers and the memorial dealers either collect that amount from their customers or include it within the charge made to the customers for furnishing the memorials, the memorial dealers are the retailers of the foundations, or the materials used therein and must pay the tax to the City on the charge made therefor as well as on the charge for the memorials. The cemeteries are in this case deemed to be acting as the agents of the memorial dealers in constructing the foundations.

When the cemeteries collect the charges for the foundations directly from the customers of the memorial dealers, the cemeteries are the retailers of the foundations and must pay the tax to the City on the charges made therefor, or, if separate charges are made for the materials and labor furnished, on the selling price of the materials.

## **NEWSPAPER PRINTERS AND PUBLISHERS - MATS FURNISHED TO**

### **Regulation 20-S.I.~~31~~32**

**General.** - The fabrication or transfer of an impressed mat is regarded as a sale when the fabrication is for, and the transfer is to, a printer or publisher for use in printing. The printer or publisher in such a case is regarded as the consumer of the mat.

**Advertising Service Companies (Cut and Copy Service).** - These companies contract for a fixed sum per month (usually based on population or circulation) to supply to publishers an advertising book service, consisting of a book or books of printed advertising illustrations which

the publishers could use. The books are accompanied by a complete set of mats which the publisher may use after he has made the selection from the display book. The service also includes suggested ad combination, layouts, copy and fashion information.

The advertising mat service companies are the retailers of the mats and books.

**Mats Furnished by Syndicators of Columns and Strips.** - This type of mat refers to comic strip drawings, syndicated columns, syndicated photos, and the like. These mats are furnished by these columnists or syndicates to the publisher. The columnist or syndicate is the retailer of the mats.

**Mats Furnished by Advertisers or Advertising Agencies.** - Advertisers are consumers of mats furnished to newspapers for advertising purposes. Tax applies, accordingly, to the sale of the mats to the advertisers. If the advertiser acts through an advertising agency which acquires the mats for his account, tax applies to the sale of the mat to the agency. If the advertising agency acts as principal in obtaining and furnishing mats to advertisers, the sale of the agency is exempt as a sale for resale, and the sale by the agency is taxable. The newspaper printers or publishers selling mats to the advertiser must charge the tax.

## **OCCASIONAL SALES - GENERAL, BUILDING AND FIXTURES, ETC. SUCCESSORS LIABILITY**

### **Regulation 20-S.I.3233**

**General.** - The Sales Tax is definitely imposed upon all sales and purchases of tangible personal property at retail. If a store, apartment house, hotel, laundry, printing office, or other office or place of business is purchased, the Sales Tax must be paid on the purchase price paid for the equipment, furniture, fixtures, supplies, and all tangible personal property included in the sale except a stock or inventory of goods acquired for resale in the trade or business. There is no exemption in the law for isolated or casual sales. Persons not regularly engaged in business who make occasional sales at retail, such as the sale of produce, farm products, household goods, furniture, farm equipment, machinery, etc., (except a "farm auction close out sale") must collect and remit the Sales Tax. If the Sales Tax has not been collected by the vendor, the purchaser is liable for the Use Tax and should remit the same to the Director of Finance.

Owners or operators of buildings who purchase construction materials for alterations and repairs, shelving, janitor's supplies and other tangible personal property for use by their tenants are the users or consumers of such articles and must pay the Sales Tax on such purchases, regardless of whether such articles are separately billed to and paid for by the tenants.

All persons regularly engaged in the business of selling tangible personal property, including wholesalers, manufacturers and processors, must collect and remit the tax on all sales made to users or consumers even though they do not ordinarily sell at retail. It is immaterial that the property sold may be of a kind not ordinarily sold by the vendor such as used fixtures, equipment, tools, machinery, etc. If the vendor fails to collect the sales tax, the vendor is liable for payment thereof. The purchaser is also liable for payment of the tax. The City may pursue

collection from either or both the vendor and the purchaser, but may only make one collection thereof.

Anyone who advertises, solicits or offers tangible personal property for sale with the intention of making repeated sales, must have a Sales Tax License and collect the tax on such sales even if they are few and infrequent.

A person not engaged in the business of selling at retail need not obtain a Sales Tax License to make casual or occasional sales from time to time not in excess of One Hundred Dollars (\$100.00) per year or not exceeding one sale per year regardless of the value of the tangible personal property sold but such tangible property sold is subject to the Tax.

**Sales of Buildings and Fixtures by Lessee of Land.** - The transfer of buildings affixed to land is taxable as a sale of personal property only if the transferee at the time of acquiring the buildings intends to sever them from the land. Accordingly, unless the purchaser intends to sever the buildings from the land, the sale of buildings in place will not be considered taxable, even though at the time of sale the owner of the buildings is the lessee of the land on which they are affixed and has the present right to remove the buildings from the land.

The transfer "in place" of such items as fixtures, and machinery and equipment, is considered a sale of tangible personal property if at the time of sale the owner is a lessee of the land or buildings to which the items are affixed and has the present right to remove the items either as trade or other fixtures, furniture, machinery and equipment or under the express terms of the lease.

The measure of the tax with respect to the sale of fixtures in place does not include any value attributable to the fact that the fixtures are attached in a particular location, even though such value might be included in the agreed sale price of the fixtures. The value for Sales Tax purposes is that portion of the consideration attributable to the items without regard to the fact of their physical attachment to real property.

**Successor's Liability.** - When Duty to Withhold Purchase Price Arises. - The requirements that a successor or purchaser of a business or stock of goods withhold sufficient of the purchase price to cover the tax liability of the seller, arises in the case of the purchase and sale of a business or stock of goods under a contract, providing for the payment to the seller or person designated by him of a purchase price in money or property or providing for the assumption of liabilities.

**Amounts to Which Liability Extends.** - The liability of the successor or purchaser of a stock of goods extends to taxes incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against him, to interest thereon to the date of payment of the taxes, to penalties for non-payment of taxes, and to penalties for negligence or intentional disregard of the Sales and Use Tax Law or authorized rules and regulations, or for fraud or an intent to evade the tax determined and unpaid at the time of sale.

**Release from Obligation** - The purchaser of the business or stock of goods will be released from further obligation to withhold the purchase price if he obtains a certificate from the Director stating that no taxes, interest, or penalties are due from a predecessor. He will also be released if he makes a written request to the Director for a certificate and if the Director does not within sixty (60) days thereafter, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, issue the certificate or send by certified mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate.

**Separate Business Location.** - Where one person operates several business establishments, each at a separate location, each establishment is a separate "business" and has a separate "stock of goods" for purposes of determining the liability of a successor. A purchaser of the business or stock of any such establishment is subject to liability as a successor with respect to that establishment even if he does not purchase the business or stock of goods of all the establishments.

**Purchase of a Portion of a Business.** - A person who purchases a portion of a business or stock of goods may become liable as a successor as, for example, where he purchases substantially all of the business or stock of goods or where the business or stock of goods is purchased by two or more persons. In cases of doubt as to possible liability, the purchaser should obtain a certificate as provided in "Release from Obligation" above.

## **PETROLEUM - REFINERIES AND PRODUCTS, TAXABILITY**

### **Regulation 20-S.I.3334**

Refiners who make a product instead of merely removing impurities from a product are manufacturers. Refiners must assess the tax on all petroleum products which they sell not exempted under Section 20-5-F-(1) or elsewhere herein.

Sales to and purchases of tangible personal property by a person engaged in manufacturing, compounding or processing a product which ultimately is to be sold at retail, are exempt from the imposition of the Sales and Use Tax. The exemption shall be conditioned upon the tangible personal property actually being used or consumed directly in the primary production, processing, manufacture, compounding or refinement, and becoming a necessary integral or component part of the finished product, wholly or partially, by either chemical, manual or mechanical means. In addition, the physical presence of the tangible personal property in the finished product must be essential to the use or consumption of the product in the hands of the ultimate consumer.

This manufacturing exemption does not apply to the purchaser of (1) items not used directly in the compounding or manufacturing operations; (2) items used in the maintenance, managerial, sales and other non-operational activities; (3) items used by persons who are designated under this Code as being ultimate consumers of materials that they purchase for their business operation; (4) equipment, tools, machinery and supplies; and (5) tangible personal property

which may be used or consumed in the production, manufacture, or compounding but do not become an integral or component part of the finished product (such as wastage), are taxable to

the user or consumer on their proportionate value. (6) Chemicals used in manufacture that do not survive the manufacturing process as ingredients are taxable.

The following formula will be used to calculate the valuation of alternative fuels having relatively equivalent BTU values produced and used by refiners. Alternative fuels include but are not limited to waste gas, still gas, off gas, flare gas, refinery gas and other gases, fuels or materials produced and consumed or flared off during the refining process.

**Formula:** Quantity of barrel of fuel oil equivalent (BFOE) produced divided by the BFOE factor (“6.00”) multiplied by the index price for Natural Gas for Colorado Interstate Gas Company, Rocky Mountains as published in “Platts’ Inside FERC’s Gas Market Report, Prices of Spot Gas Delivered to Pipelines”, for the applicable month in which the BFOE is consumed. The formula recognizing that 1 (one) MCF of Natural Gas being relatively equal to 1 (one) MMBTU.

**BFOE FACTOR (“6”) CONVERSION: 1 BFOE = 6 MCF or 1/6 BFOE = 1 MCF or 1 BFOE = 6MMBTU or 1/6 BFOE = 1MMBTU.**

**Understanding:** 1MCF of Natural Gas = 1MMBTU Natural Gas.

In the event “Platts’ Inside FERC’s Gas Market Report, Prices of Spot Gas Delivered to Pipelines” is not available the substitute publication for use in determining the wellhead price will be the Energy Information Administration/Natural Gas Monthly – average wellhead head price for the Colorado City Gate as stated in the Energy Information Administration/Natural Gas Monthly.

**The following definitions relate to the above formulas for the valuation of alternative fuels:**

- (1) **BFOE** – based on its BTU content, any kind of fuel burned may be expressed as an equivalent quantity of some other kind of fuel; e.g. the refinery gas burned is expressed as equivalent to a barrel of fuel oil.
- (2) **Quantity of BFOE produced** – amounts (expressed in single units) of BFOE produced during the reporting period will be supplied by the reporting taxpayer.
- (3) **6.00 BFOE Factor** – thermal conversion value to be used in converting BFOE (Barrels of Fuel Oil Equivalent) to MCF or MMBTU for alternative fuels as provided by the Energy Information Administration (EIA).
- (4) **Prices of Spot Gas** – the current price of natural gas delivered to the pipeline for a specific time period.

- (5) **Platts' Inside FERC's Gas Market Report** – this publication is produced by Platts and reports the index price for Natural Gas for Colorado Interstate Gas Company. This publication can be viewed at the administrative offices of the refinery or subscribed to through the website: <http://www.Platts.com>
- (6) **Average wellhead price** – the cost of gas as it comes from the well excluding cleaning, compression, transportation and distribution charges.
- (7) **Energy Information Administration (EIA)** – the statistical information collection and analysis branch of the Department of Energy, United States Government.
- (8) **Natural Gas Monthly** – this U.S. Government publication is produced by EIA and is found at the following web site and if the web site is changed, then at any substitute web site: [http://www.eia.doe.gov/oil\\_gas/natural\\_gas/data\\_publications/natural\\_gas\\_monthly/ngm.html](http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html)
- (9) **Colorado City Gate Monthly Price** – is the current monthly price of an MCF of Natural Gas delivered to the Colorado City Gate published by the EIA.
- (10) By agreement, the current monthly Natural Gas price is chosen in order to more closely mirror the cost of natural gas purchased and consumed within the same period the alternative fuels are being produced and consumed in the refining process.

## **PHOTOGRAPHERS, PHOTOSTAT PRODUCERS, PHOTO FINISHERS, X-RAY LABS, ENGINEERS AND DRAFTSMEN**

### **Regulation 20-S.I.3435**

**Photographers, Photostat Producers, Engineers and Draftsmen:** Tax applies to sales of photographs, construction or operational plans, drawings and specifications (Work Product), whether or not produced to the special order of the customer. This regulation applies in any case when only the possession but not the title of the Work Product is transferred even when the purpose for the Work Product is for one time only use such as might be the case for reproduction in newspapers or magazines, or in any case when title or both title and possession is transferred. The tax applies to sales of Work Product whether or not produced to the special order of the customer and to charges for the making of the Work Product copies out of materials furnished by the customer. No deduction is allowable on account of such expenses as travel time, rental of equipment, of salaries or wages paid to assistants or models, whether or not such expenses are itemized in billings to customers.

The tax does not apply to sales to engineers, draftsmen, photographers and photostat producers or tangible personal property which becomes an ingredient or component part of the Work Product sold such as mounts, frames and sensitized paper. Tax does apply to sales of materials used in the process of making the Work Product without becoming an ingredient or component part thereof such as chemicals, trays, films, plates, proof paper, and cameras.

**Photo Finishers:** Tax applies to charges for printing pictures or making enlargements from negatives furnished by the customer, and to charges for developing the negatives. Tax does also apply to charges for tinting or coloring pictures furnished to the finisher by the customer.

Tax does not apply to sales to photo finishers of tangible personal property which becomes an ingredient or component part of the finished product sold, but does apply to sales to the photo finisher not becoming such an ingredient or component of their end taxable retail sale to the customer.

**X-Ray Laboratories:** Producers of X-Ray film for the purpose of diagnosis are the consumers of materials and supplies used in the production thereof. Thus, the tax applies to the sale of such materials and supplies to laboratories producing X-Ray film for the purpose of diagnosis. Whether the laboratory is a "lay laboratory" or is operated by a physician, surgeon, dentist, or hospital is immaterial.

## **PUBLIC UTILITIES - GAS, ELECTRICITY, PHONE, TELEGRAPH, WATER, ETC., SERVICES**

### **Regulation 20-S.I.3536**

The full amount charged for all services and tangible personal property rendered and sold by the above, public utilities whether furnished by Governmental or Private Corporations are taxable to the full extent of the charges made to any person under this code with only those deductions allowed as are specifically set forth in the regulations and Code in Section 20-5 herein.

## **RAILROADS**

### **Regulation 20-S.I.3637**

"Railroads" are taxable in full in Commerce City on all their purchases of electricity, gas, coal, fuel oil or coke and specifically on diesel fuel for diesel locomotives when delivered to them through railway tank cars and pipelines loaded in Commerce City and highway tanker trucks when such trucks are hired to effect delivery or are owned by the railway.

The "Railroads" are also liable to pay the tax on all equipment (except rolling stock) and other tangible personal property (including railway ties and rails, bridge materials, and signal devices) purchased and delivered or used, stored, distributed, or consumed in Commerce City.

The rolling stock exemption herein granted only applies to common carriers for hire to the general public and does not refer to rolling stock owned, leased or used as part of a private railroad operation.

The term "rolling stock" as used herein means railroad equipment operated with the use of wheels solely on tracks of a railroad including locomotives, railroad cars, boxcars, coaches and freight cars, work trains, railroad track geometry cars, ballast regulators, rail grinders, ballast temper cars, Sperry rail inspection cars, ballast loaders/removers, continuous welded rail handlers, weld cars, snow removal cars, flatbed cars, hopper cars, tank cars, deicer cars, dump cars and crane cars.



## **REPAIR SERVICES**

### **Regulation 20-S.I.3738**

Under Section 20-1, 20-3-47, 20-3-54, 20-3-63 of this Code all sales, leases and rentals of tangible personal property are taxable with no deductions therefrom on account of labor, services, profit, cost of materials used or any other cost on the sale of such property.

Regardless that some business establishments that convey tangible personal property to the customer may be allowed under the laws or regulations of other taxing jurisdictions to consider themselves consumers (and not retailers) for purposes of payment of tax, any business enterprise conveying tangible personal property in a combined sale of property and service to any customer shall, at the discretion of the manager, be considered a retailer under the Commerce City Tax Code and shall charge the tax to the customer on that combined sale of property and service. The tax will be charged on the total purchase or selling price to the customer without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, or any other expense whatsoever on any of the following types of repair, restoration, refinishing alteration. If such retailer fails to itemize the materials portion of that combined sale of property and service to the customer and charge the Commerce City Tax on the materials portion of the invoice to the customer, then that retailer must remit the tax on the total combined sale of property and service to the customer.

An example of such above sales would be in regard to repair services to tangible personal property, as follows:

|  |   |
|--|---|
| Air conditioning, room unit repair                   | Locks and locksmith repairing and replacements        |
| Appliance repairing, any type automobile repair      | Luggage and leather goods repairing                   |
| Bicycle repair                                       | Motorcycle and motor scooter repairing                |
| Bookbinding  | Motor and transformer rewinding                       |
| Carpet and rug repairing                             | Musical instrument repair                             |
| Clock repairing                                      | Office furniture and equipment repair and refinishing |
| Compressor repairing                                 | Phonograph repairing                                  |
| Data processing equipment repairing                  | Photo retouching                                      |
| Dishwasher machine repairing                         | Photographic equipment repairing                      |
| Electrical appliance repairing                       | Piano refinishing, rebuilding, and repairing          |
| Electrical motor repairing                           | Plating and electroplating                            |
| Electronic equipment repairing                       | Refinishing or finishing work                         |
| Any engine repair                                    | Radio and television repairing                        |
| Furniture repair, upholstering, or other refinishing | Range and stove repairing                             |
| Ice making equipment repairing                       | Refrigeration equipment repair                        |
| Jacks repairing                                      | Sewing machine repair                                 |
| Jewelry repair and renovation                        | Shoe and leather goods repair                         |
| Lamp repairing                                       | Sign maintenance and repair                           |
| Laundry equipment repairing                          | Stereophonic sound equipment repair                   |
| Lawnmower sharpening and repairing                   | Storm window and door repair                          |



Tennis racket re-stringing and repairing  
Tire recapping, retreading and repairing  
Tool repair work  
Transmission repair  
Truck repairing service

Vacuum cleaner repair  
Watch and jewelry repair  
Weaving and mending repair and clothing alterations and repair work for which a charge is made

Wheel alignment, frame and axle servicing and repair and any other remaking, remanufacturing, reprocessing, reforming, reshaping, refashioning, refabricating, reforging or other repair of tangible personal property as defined under this code to bring to a state of usefulness, anew, that tangible personal property, regardless the ownership of such property may reside in the purchaser, under rule as stated in 20-S.I.20 herein.

Where the sale of personal property involves the attachment or installation of such property to personal property owned by the purchaser, delivery shall be deemed to occur at the point of such attachment or installation.

Nothing contained in this regulation should be construed or is intended to be a limitation on the legislative intent of taxability as stated in Code Section 20-1-1 and 20-1-2, however, it is the interpretation that generally the tax will not fall on the total amount charged for repair, renovation, etc., of tangible personal property installed, or built into real property.

## **RESTAURANTS**

### **Regulation 20-S.I.3839**

A) Food items taxable under the Commerce City Sales & Use Tax Code are the following:

- 1) On all meals or food or food products consumed on the premises of the vendor.
- 2) On all meals, food and food products prepared or offered by the vendor at the place of sale for immediate consumption by the purchaser including take out Restaurant or Drive-In Restaurant foods. The term meal shall include fountain lunches, sandwiches, non-alcoholic beverages, hot popcorn, warm hot dogs, hot coffee and other types of prepared food served for immediate consumption, no matter how simple the menu.

**"Prepared"** shall mean any act of making ready for immediate consumption and shall include, but shall not be limited to, combining of two or more ingredients (or product items), heating, cooling, freezing, dividing (to single portions) or any other act normally attributed to functions classified as food service type operations.

- 3) On all alcoholic beverages, both by the package and by the drink. Alcoholic beverages to include fermented malt beverages, malt, vinous, and spirituous liquors.
- 4) On all food products vended from any vending device.

- 5) On all sales of any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form: (a) which is described on its package or label as a food supplement, or dietary adjunct, and to any such product, (b) which is described or designed to remedy specific dietary deficiencies or to increase or decrease one or more of the following areas of human nutrition: (1) Vitamins; (2) Proteins, (3) Minerals; (4) Caloric intake.

## **REUPHOLSTERS OF FURNITURE**

### **Regulation 20-S.I.3940**

**General.** - Upholsterers generally perform four functions when completing a contract for their services:

- 1) The sale of materials and parts.
- 2) The fabrication of back and seat cushions and the cutting and sewing of new material used for upholstery covering.
- 3) Labor for stripping old material and applying new material to tangible personal property.
- 4) Repair labor such as retying springs and refinishing the exposed wooden areas of furniture, i.e., arms, legs, etc.

**Sales of Materials and Parts.** - Reupholsters are the retailers of materials and parts they sell in connection with reupholstering jobs. These include but are not limited to: fabrics for furniture covering cushions, foam rubber, padding, burlap, dust covers, seat decking, spring units, legs, arms and casters.

Reupholsters also are the retailers of items with small unit values or furnished in small quantities on any particular job. These are commonly referred to as findings and include such items as brads, buttons, cardboard strips, edge roll, edge wire, glue, spring clips, tacks, tacking strips, thread, twine, web cord and varnish.

**Fabrication Labor.** - Charges for fabrication labor are taxable. Cutting and sewing materials for coverings for furniture being upholstered, including back and seat cushions, are steps in the process of completing a new article and are fabrication labor. Labor for making new furniture from materials furnished directly or indirectly by the customer is fabrication labor, additionally labor charges for repairing furniture and for applying new materials to furniture are taxable, under the rule set in Regulation 20-S.I.20.

## **TRUSTEES, MORTGAGEES, RECEIVERS, EXECUTORS AND ADMINISTRATORS**

### **Regulation 20-S.I.4041**

When trustees, receivers, executors, or administrators, by virtue of their appointment, (whether appointed by a state or federal court) continue to operate, manage, or control a business engaged

in the sale of tangible personal property at retail, they must collect and remit the sales tax. In addition, they must report all items subject to the Commerce City Sales and Use Tax and remit payment therefore.

The taxes apply notwithstanding the fact that such trustees, receivers, executors or administrators may be engaged in liquidating the assets of a bankrupt or insolvent, or a decedent.

Tax does apply to sales of tangible personal property at public auction pursuant to the provisions of a chattel mortgage, regardless that:

- 1) the sale is made pursuant to a court decree of foreclosure by an officer appointed by the court for that purpose, or
- 2) the property is bid in by the mortgagee.
- 3) The sale is made as a result of tax warrant action.

Tax applies to other foreclosure sales and to sales by a person who has bid in the property, to the same extent as to other sales.

**SECTION V**

**COMMERCE CITY SALES AND USE TAX CODE (20) -**  
**SALES AND USE TAX HANDBOOK INDEX**  
**COMMERCE CITY SALES AND USE TAX - CODE 20**

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