

Sec. 3-28-70. - Vendor to withhold vendor's fee or retainage.

The vendor (retailer) shall be entitled as collecting agent of the City to withhold a vendor's fee, in the amount of three and one-third percent (3 ⅓%) of the total City sales tax collected by the vendor, up to a cap of twenty-five dollars (\$25.00) from the total amount due by the vendor to the City each month if the taxes due are remitted ~~by the vendor and postmarked by the due date and paid in full by~~ **electronic means on or before the due date.**

Sec. 3-28-80. Exemption to sales and use tax.

This Section sets forth the only recognized allowable permissible exemptions from the City sales or use tax. The exemptions set forth in this Section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the taxpayer to establish the applicability of an exemption. The following are exempt from imposition of the City sales tax, use tax or both, as the context sets forth. There shall be exempt from taxation the following:

- (1) All sales to the United States government and to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.
- (2) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities; except that any veterans' organization that qualifies as a charitable organization pursuant to Section 3-28-20 hereof shall be exempt from taxation under the provisions of this Section only for the purpose of sponsoring a special event, meeting or other function in the State that is not part of such organization's regular activities in the State.
- (3) All sales of cigarettes.
- (4) All sales which the State is prohibited from taxing under the constitution or laws of the United States or the State.
- (5) a. All sales of drugs dispensed in accordance with a prescription; all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician; all sales of glucose usable for treatment of insulin reactions; all sales of urine- and blood-testing kits and materials; all sales of insulin measuring and injecting devices, including hypodermic syringes and needles; all sales of prosthetic devices; all sales of wheelchairs and hospital beds; all sales of drugs or materials when furnished by a doctor as part of professional services provided to a patient; and all sales of corrective eyeglasses, contact lenses, or hearing aids;
b. When sold in accordance with a written recommendation from a licensed doctor, all sales of therapeutic devices, appliances or related accessories, with a retail value of more than one hundred dollars (\$100.00), which are sold to correct or treat a human physical disability or surgically created abnormality;
c. All sales of therapeutic devices, appliances or related accessories, with a retail value of one hundred dollars (\$100.00) or less, which are sold to correct or treat a human physical disability or surgically created abnormality.
- (6) All sales and purchases of commodities and services to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch,

trailer coach, mobile home, auto camp or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year.

- (7) All sales of gasoline which are taxed under the provisions of Article 27 of Title 39 of the Colorado Revised Statutes (C.R.S. 39-27-101 et seq.).
- (8) All sales made to schools, other than schools held or conducted for private or corporate profit.
- (9) Any sale of a new or used trailer, semi-trailer, truck, truck tractor or truck body manufactured within this State if such vehicle is purchased from the manufacturer for use exclusively outside this State or in interstate commerce and is delivered by the manufacturer to the purchaser within this State, if the purchaser drives or moves such vehicle to any point outside this State within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this State and will be removed from this State within thirty (30) days after the date of delivery.
- (10) Any sale of a new or used trailer, semi-trailer, truck, truck tractor or truck body if such vehicle is purchased for use exclusively outside this State or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this State, if the purchaser drives or moves such vehicle to any point outside this State within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this State and will be removed from this State within thirty (30) days after the date of delivery.
- (11) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.
- (12) Any right to the continuous possession or use of any article of tangible personal property under a lease or contract, if the lessor has paid a sales or use tax on such tangible personal property upon its acquisition. A lessor of tangible personal property may acquire such property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on such property.
- (13) The transfer of tangible personal property without consideration (other than the purchase, sale or promotion of the transferor's product) to an out-of-state vendee for use outside of this State in selling products normally sold at wholesale by the transferor.
- (14) The sale of tangible personal property for testing, modification, inspection or similar types of activities in this State if the ultimate use of such property in manufacturing or similar types of activities occurs outside of this State and if the test, modification or inspection period does not exceed ninety (90) days.
- (15) The sale of special fuel, as defined in Section 39-27-101 (6.3) C.R.S., used for the operation of farm vehicles when such vehicles are being used on farms and ranches.
- (16) Any sale of any article to a retailer or vendor of food, meals or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals or

beverages purchased, and if a tax is paid on the retail sale as required by Section 3-28-75 hereof.

- (17) Any sale of any container or bag to a retailer or vendor of food, meals or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals or beverages purchased, and if a tax is paid on the retail sale as required by Section 3-28-75 hereof.
- (18) All retail sales involving the exchange of property as defined in Section 3-28-20 hereof, price or purchase price, and in which, because there is no additional consideration involved in the transaction, there is no purchase price.
- (19) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by:
 - a. The United States government, the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;
 - b. Charitable organizations in the conduct of their regular charitable functions and activities; or
 - c. Schools, other than schools held or conducted for private or corporate profit.
- (20) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline.
- (21) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft.
- (22) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment or other railroad rolling stock.
- (23) All sales of locomotives, freight cars, railroad work equipment and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.
- (24) Internet access services, as defined in Section 3-28-20 hereof.
- (25) All sales and purchases of livestock; all sales and purchases of live fish for stocking purposes; and all farm close-out sales shall be exempt from taxation.
- (26) All sales and purchases of feed for livestock; all sales and purchases of seeds; and all sales and purchases of orchard trees shall be exempt from taxation.
- (27) All sales and purchases of straw and other bedding for use in the care of livestock or poultry shall be exempt from taxation.
- (28) Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S., shall be exempt from taxation under this Article; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in Section 42-1-102(106)(b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of Section 39-26-113, C.R.S., shall be exempt from taxation.

- (29) All sales of food purchased with food stamps shall be exempt from taxation. For the purposes of this Subsection, *food* shall have the same meaning as provided in 7 U.S.C. Section 2012 (g), as such Section exists on October 1, 1987, or is thereafter amended.
- (30) All sales of food purchased with funds provided by the special supplemental food program for women, infants and children, as provided for in 42 U.S.C. Section 1786, shall be exempt from taxation. For the purposes of this Subsection, *food* shall have the same meaning as provided in 42 U.S.C. Section 1786, as such section exists on October 1, 1987, or is thereafter amended.
- (31) All sales of precious metal bullion and coins, as defined in Sections 39-26-102 (2.6) and (6.5), C.R.S., shall be exempt from taxation.
- (32) All sales and purchases of tangible personal property by a manufacturer that uses such property as a component part of goods that it manufactures, including, but not limited to, high technology goods, and that donates such goods to the United States government; the State or any department, institution or political subdivision thereof; or any organization exempt from federal income taxes pursuant to Section 501(c)(3) of the *Internal Revenue Code of 1986*, as amended, to the extent that the aggregate value of the goods included in a single donation exceeds one thousand dollars (\$1,000.00) shall be exempt from taxation.
- (33) All sales of equipment, as defined in Section 12-9-102(5), C.R.S., to a bingo-raffle licensee, as defined in Section 12-9-102(1.2), C.R.S., shall be exempt from taxation.
- (34) Payment of City sales tax. The use, storage, distribution or consumption in the City of tangible personal property upon the sale of which the City retail sales tax at the rate imposed by Section 3-28-40 hereof has been legally imposed, collected and remitted is exempt from the levy of the City use tax.
- (35) Payment of other state municipality tax. 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 the rate imposed by Section 3-28-40 hereof has been legally imposed, collected and remitted to a municipal corporation organized and existing under the authority of the State Constitution is exempt from the levy of City use tax. If the rate of retail sales tax paid to such state municipal corporation is less than the rate imposed by Section 3-28-40 hereof, the net difference between the tax due under this Article and the tax computed at the rate of such other retail sales tax shall be paid to the Finance Director. This exemption shall not apply if a tax paid to another state municipal corporation was not legally due under the laws of such municipal corporation or the laws of the state municipal corporation are not compatible with those of the City as to specific taxation and exemption as applied to the transaction in question. City taxes collected on sales within the City, which are remitted to another taxing authority in error, are not legally imposed taxes. This exemption shall also be denied for subsequent transactions within the City, including but not limited to rentals and leases.
- (36) Payment of other state's sales tax. 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 legally imposed and collected a retail sales tax at a rate equal to or greater than the sum of the City's sales tax and all state-collected sales taxes in effect within the City on the purchase date is exempt from the levy of the City use tax. If the rate of retail sales tax paid to such other state and/or its political subdivisions is equal to or less than the sum of all state-collected sales taxes in effect within the City on the purchase date, the full City use tax at the rate imposed by Section 3-28-40 hereof is due. If the

rate of retail sales tax paid the other state and/or its political subdivision is more than the sum of all state-collected sales taxes in effect within the City on the purchase date, but less than the sum of the City's sales tax and all state-collected sales taxes in effect within the City on the purchase date, the City use tax will be due on the net difference between that tax paid in excess of the rate imposed by Section 3-28-40 hereof and the sum of the City's sales tax and all state-collected taxes in effect within the City on the purchase date. In no instance will the City tax credit or charge exceed the rate imposed by Section 3-28-40 hereof. This exemption shall not apply if a tax paid in 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 that state and/or its subdivisions are not compatible with those of the City as to specified 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 and leases.

- (37) Purchase price including other direct taxes. The City sales and use tax shall not apply to any direct tax legally imposed by this Article or by the federal government or by the State.
- (38) 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 longer duration than one-third (?) of its depreciable life, using the straight line depreciation method, prior to the time the property was brought into the City, and if such property was used for the primary purpose for which it was acquired prior to the time it was brought into the City.
- (39) Recreation services. Recreation services provided on property owned by a political subdivision of the State, including the City, shall be exempt from the City sales tax. Nothing in this Subsection shall be deemed to exempt tangible personal property or food and beverages sold at retail by such a political subdivision.
- (40) Returned goods; discounts and allowances.
 - a. 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.
 - b. 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 that, 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.
- (41) Sales for taxable resale (wholesale).
 - a. Component parts. The purchase price paid or charged on the sale to and purchase 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 of the following conditions:

1. Is actually and factually transformed by the process of manufacture;
 2. Becomes by the manufacturing processes a necessary and recognizable ingredient, component and constituent part of the finished product; and
 3. Its physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.
- b. Exempt commercial packaging materials. The sales of exempt commercial packaging material as defined in Section 3-28-20 hereof are exempt under this Subsection.
 - c. 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.
 - d. 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.
- (42) Sales to and purchases by charitable and quasi-governmental organizations. The price paid or charged on direct sales to and direct purchases by charitable and quasi-governmental organizations, in the conduct of their regular charitable and quasi-governmental capacities only. There is no sales tax on articles sold to charitable and quasi-governmental organizations in the conduct of their regular charitable functions and activities.
- a. Submission of information; definitions.
 1. The charitable exemption provision contained in this Subsection does not grant an exempt status automatically. The Finance Department may require submittal of the following information:
 - a) A copy of the organization's federal exemption letter.
 - b) The organization's financial statement showing the source of funds and its expenditures.
 - c) Copies of the organization's articles of incorporation, bylaws, and other organizational documents, copies of resolutions and minutes of the organization's governing body, and such other documents as may be needed to establish the organization's religious, charitable or quasi-governmental purpose.
 2. For the purposes of the City's sales and use tax, the terms *religious*, *religious purposes* and *quasi-governmental purposes* shall be defined as being charitable or for charitable use only.
 3. The religious or quasi-governmental nature of all activities shall be equated, for the purposes of this Article, with the term *charitable*, according to the City's rules of administration, and only to the extent that the items purchased are put to such charitable use will the exemption apply, as defined in Subsection 3-28-20 .

- b. Sales to ministers, priests, rabbis or other employees, staff members, faculty and students of religious or charitable organizations for their personal use are not exempt from the sales and use tax.
 - c. Sales by a nonprofit entity or organization which is not a charitable, religious or quasi-governmental organization are taxable.
 - d. Before the vendor may grant an exemption from the tax on the sale of any tangible personal property or taxable service, the vendor must be furnished with and must record the state exempt license number of the institution or organization seeking such a tax-free purchase. Such exempt license number is not a blanket authorization for total exemption, but only for exemption of activities specified by the City. Those purchases made by such organizations or institutions that are not specifically exempt must be reported for tax purposes.
 - e. Hospitals, nursing homes, etc., not meeting the charitable definition in Section 3-28-20, are subject to the sales tax on all of their purchases of tangible personal property that are not resold, or if resold, the tax is not charged.
 - f. Only the governmental entities specifically cited in Subsection (43) of this Section are immune from the assessment of the sales tax on their purchase of tangible personal property and services in their governmental capacities only.
 - g. Schools or educational institutions which levy and are supported by tax revenues are exempt from tax under the government exemption, subject to the limitations set forth in Subsection (43). Private schools, accredited by the State Department of Education, are taxable on all their purchases of tangible personal property or taxable services unless purchased and used for strictly religious or charitable purposes. All other schools not accredited by the State Department of Education are taxable on all purchases for use, regardless of the ultimate utilization of the property acquired.
 - h. All federal- or state-chartered banks are taxable, including national, state and industrial banks, on all of their purchases not for taxable resale and on all of their sales. The City sales taxes will be collected and remitted to this City on the amount paid by such banks on all their lease and rental payments as well as on all other purchases and uses from the effective date of this Article.
 - i. Notwithstanding the provisions of this Section, all lumber, fixtures and other construction materials and supplies incorporated into any building or other structure or improvement to real property which is owned and occupied by a charitable, quasi-governmental or religious organization in the conduct of its regular charitable, quasi-governmental or religious capacity is exempt.
- (43) 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 and to the State, its departments or institutions and the political subdivisions thereof, including the City, in their governmental functions and activities only.
- (44) 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.

- (45) 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 nonresident thereof for the nonresident's own personal use is exempt under this Code.
- (46) The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.
- (47) The carryout bag fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

Sec. 3-28-85. Proof of exemption; responsibilities of taxpayers; licenses.

- (a) Exemption; burden of proof. The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying City tax upon any goods sold or purchased, paying the tax to the Finance Director, or from making and remitting the appropriate tax returns, shall be on the vendor, retailer, consumer or purchaser under such reasonable requirements of proof as the Finance Director may prescribe.
- (b) Reports and records. The City Finance Director 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 Finance Director may deem sufficient to show whether or not such person is liable under this Article for payment or collection of the tax imposed in this Article.
- (c) Vendor responsibility for collection of and remittance of tax and license
 - (1) Collection of tax. Every retailer or vendor engaged in business or selling at retail, as such are defined in this Article, shall, irrespective of the provisions of Section 3-28-40, be liable and responsible for the payment of taxes in the amount yielded by applying the rate imposed by Section 3-28-40 hereof to all taxable sales made by such retailer or vendor of commodities or services as specified in Section 3-28-75 hereof.
 - (2) Remittance of tax. Every retailer or vendor engaged in business and selling at retail, as such are defined in this Article, shall file a return as prescribed in this Article with the Finance Director on or before the twentieth day of the month, unless the twentieth day falls on a weekend day or holiday; then the return is due on the first business day thereafter, for the preceding month or months under report and remit taxes in the amount yielded by applying the rate imposed by Section 3-28-40 hereof to such sales and also any excess tax amounts as provided in Subsection (j) of this Section. Retailers or vendors who file and make full payment on or before the due date by electronic means may deduct three and one-third percent (3⅓%) up to a maximum of twenty-five dollars (\$25.00) of the amount of taxes to be paid by the vendor or retailer's expense of collection and remittance of tax. Vendors or retailers who do not file and pay in full by electronic means on or before the due date shall not be permitted to deduct any amount to cover the expense of collection and remittance of tax for that return. 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.

- (3) License for vendors. Unless otherwise exempt under this Article, it shall be unlawful for any person to engage in business in the City as defined in this Article, without first having obtained a license therefor, which license shall be granted and issued by the Finance Director.
- (d) Marketplace Sales. Obligation to collect sales tax.
 - (1) A Marketplace facilitator engaged in business in the City is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the City, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by a marketplace facilitator.
 - (2) A Marketplace facilitator shall assume all duties responsibilities, and liabilities of a vendor as defined in this article. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The City may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
 - (3) The liabilities, obligations and rights set forth under this article are in addition to any duties and responsibilities the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.
 - (4) A marketplace seller shall be subject to all the same licensing, collection, remittance, filing, and recordkeeping requirements as any other retailer under this Article for retail sales made on its own behalf and not facilitated by or through a licensed marketplace facilitator in a marketplace.
- (e) Marketplace seller relief. A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator.
 - (1) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or
 - (2) For whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.
- (f) Auditing. With respect to any sale, the City shall solely audit the marketplace facilitator for sales made by the marketplace sellers or multichannel sellers but facilitated by the marketplace. The City will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.
- (g) No retroactive application. Responsibilities, duties, and liabilities of a marketplace facilitator, marketplace seller, or multichannel seller described in this Section begin upon the earlier of when they became licensed to collect the City's sales tax or when they became legally obligated to collect the City's Sales Tax under this Article.
- (h) Exempt institutions. No exempt organization, including quasi-governmental, charitable or other types of organizations, may purchase tax free in the City or use in the City tangible personal property or taxable services tax free unless a State Sales Tax Exemption Number is presented to the vendor prior to the allowance of a purchase tax free.

- (i) Contractors, owners or lessees of realty; methods of paying use tax when construction permit required. Subject to the provisions of Section 3-32-60 hereof, every contractor who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure or improvement to real property, and who shall purchase lumber, fixtures or any other construction materials and supplies used therefor and every owner or lessee of realty located in the City upon which any improvements have been or will be made or upon which any articles of tangible personal property are or will be attached, shall pay the City use tax as follows:
 - (1) Payment on estimated basis. By paying a permit use tax on the estimated percentage basis based on a percentage of the total valuation of the construction contract and paid, either through the owner, lessee or the general contractor, or separately, if such contractor is a subcontractor electing to do so, at the time a building permit is issued.
 - (2) Taxes for construction materials and prefabricated goods and materials. Taxes for all purchases of construction materials and prefabricated goods and materials shall be satisfied in full. The owner of the property for which such materials were purchased shall be ultimately responsible for the payment of any City use taxes that are not properly paid by the contractor. Records supporting such construction use tax payments and all related construction records are subject to review by the Finance Director in accordance with Section 3-32-60 hereof. Any overpayment of an estimated construction use tax shall be subject to refund in accordance with Section 3-28-105 hereof.
- (j) New business purchases; sellers and purchasers.
 - (1) Acquisition of business. The City tax shall be remitted on the price paid for tangible personal property which is acquired with the purchase of a business and for use in the operation of such business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by 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.
 - (2) Purchaser 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 the sales tax has not been remitted must compute and pay the tax at the time of the sale.
 - (3) Agent of seller and seller liable for tax. The taxpayer shall report such tax on the City sales tax return as prescribed. The seller or the seller's agent will be held liable for sales tax remittance on the sale of the business in the event that the purchaser fails to remit the tax due on the purchase.
- (k) Purchasers of automotive vehicles, mobile machinery or self-propelled construction equipment. Any resident of the City who purchases any automotive vehicle, mobile machinery or self-propelled construction equipment as defined in Section 3-28-20 hereof for use within the City, and who has not paid the tax imposed by this Article to a vendor required or authorized to collect the tax shall pay the City tax due to the County Clerk at the time the automotive vehicle, mobile machinery or self-propelled construction equipment is registered.

- (l) 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 under this Article, under a conditional sales contract or 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.
- (m) Excess collections; failure to remit collections. If any vendor shall during any reporting period collect any excess City tax amounts, the vendor shall remit to the City the full net amount of the tax imposed in this Article, together with such excess City tax amounts. If it is not possible to determine to whom the excess tax is due, the vendor shall remit one-half (½) of such excess tax to the City and one-half (½) of such excess tax to the State. The retention by the vendor of any excess tax amounts or the intentional failure to remit punctually to the City the full amount required to be remitted by the provisions of this Article is a violation of this Article.
- (n) Unlawful to advertise absorption of tax. 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 Article 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.
- (o) Special accounting for alcoholic beverage sales by the drink, vending machine sales of tangible personal property, recreation services, sales. Any retailer selling malt, vinous or spirituous liquors by the drink may include in the 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. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in Subsection (c)(2) above. Also, any vending device operator selling tangible personal property through vending devices, any vendor who sells recreation services may include in the sales price the tax levied under this Section, with the same provisions as provided above.
- (p) Special accounting for 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 such shall be required to pay the tax levied under this Article upon the full contract price, unless application is made to the Finance Director for permission to use a percentage basis for reporting the tangible personal property sold and the labor or services supplied under such contract. The Finance Director is 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 such combination contract or sale which shall be subject to the tax levied pursuant to the provisions of this Article. This Subsection shall not be construed to include terms upon which the tax is imposed on the full purchase price, as defined in Section 3-28-20 hereof, nor shall it be construed as an allowance for the vendor to fail to itemize to the customer the taxable and nontaxable portions of the bill.
- (q) Special accounting for sales tax collections by nonresident vendors. Every retailer or vendor engaged in business in this City, as such is defined in Section 3-28-20 hereof, and making sales, even though not maintaining an office in this City, of tangible personal property or taxable services

subject to the sales tax must, in accordance with this Article, collect and remit the sales tax on such sales in like manner as a retailer or vendor maintaining an office in this City.

- (r) Tax return contents, reporting periods, sale of business Reporting periods.
 - (1) Tax return contents, form. The returns to be filed by the taxpayer or the taxpayer's duly authorized agent shall contain such information and shall be completed in such manner and upon such forms as the Finance Director may prescribe.
 - (2) Reporting periods. The Finance Director may, by rule, permit a vendor or licensed consumer to make returns and pay taxes on a monthly, quarterly or annual basis.
 - (3) Sale or transfer of business. Any sale, transfer or purchase of an interest in a business enterprise by any person, where the respective interest of the person purchasing or selling, as a result of the transaction, has changed in any degree, requires the issuance of a new license. In all cases where any of the assets of any new business are within the City, payment of sales tax is required on transfer of title or possession, or both, of the tangible personal property taxable in this Article, whether involving a retail establishment or any other type business enterprise.

Sec. 3-28-95. Penalties, interest and estimated taxes.

- (a) Assessment to recover unpaid penalties, interest and estimated taxes. If any person, taxpayer or vendor fails, neglects or refuses to collect the tax or to make a return and pay the tax as required by this Article or should fail to remit the proper amount of tax or underpays the tax because of negligence or fraud, penalties and interests shall be added to such tax and imposed in accordance with the following provisions. If a person required to file a return and pay the taxes imposed by this Article disregards the provisions of this Article and, in doing so, repeatedly or on a regular basis fails to file accurate tax returns or fails to remit the correct amount of taxes, the Finance Director, on such information as is available, shall make an estimate of the tax and additions of penalty and interest thereto and shall give to the delinquent taxpayer, person or vendor written notice of final determination, assessment and demand for payment. Such notice shall be served personally or by first class mail, and the assessed amount shall be due and payable within thirty (30) days after the date of such notice. An estimate of taxes due shall also be made if an examination under Section 3-28-90 hereof shows that there are inadequate records available to make an actual determination of taxes due.
- (b) Failure to file tax return; failure to pay tax; deficiency due to negligence. When penalties and/or interest are required or permitted to be charged under any provisions of this Article, penalties and interest shall be determined as follows:
 - (1) When a tax deficiency exists from underreporting, mathematical error or failure to pay due to negligence or a knowing, intentional disregard of the filing and payment requirements of the City, but without intent to defraud, penalty and interest shall be assessed as follows:
 - a. For transactions consummated on or after January 1, 2003:
 - 1. The sales tax penalty shall be ten percent (10%) of the deficiency.
 - 2. The annual rate of interest assessed pursuant to this Section shall be imposed and paid at the rate of one percent (1%) per month. Such interest shall accrue from the date such payment is overdue to the date paid.

- (c) 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 shall notify the taxpayer by written notice of final determination, assessment and 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 or 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.
- (d) Deficiency due to fraud. For transactions consummated on or after January 1, 2003, if any taxpayer or vendor fails to file a return or pay the tax on any return required under this Article on the date prescribed therefor, and any part of the deficiency is due to fraud with the intent to evade the tax, there shall be added one hundred percent (100%) 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 and demand for payment by the Finance Director, and an additional three percent (3%) per month on such amount shall be added from the date the tax was due until paid.
- (e) 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 tax within the time specified for such payment and the Finance Department has been required to exercise its enforcement proceedings three (3) or more times through the issuance of a distraint warrant to enforce collection of any such taxes due, the Finance Director is 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 dollars (\$25.00), whichever amount is greater, such additional amount being imposed to compensate the Finance Department for administrative and collection costs incurred in collecting such delinquent taxes.
- (f) Waiver of penalty; credit; limitation. The Finance Director is authorized to waive, for good cause shown, any penalty or interest assessed as provided in this Article.
 - (1) 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.
 - (2) No interest assessed on credit. If any portion of a tax is satisfied by credit of an overpayment, 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.
 - (3) 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.

Sec. 3-28-105. Overpayments; erroneous refunds; refunds.

- (a) Interest allowance. Interest shall not be allowed and paid upon any overpayment in respect of any sales or use tax.
- (b) Refund erroneously made 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 of twelve percent (12%) per annum from the date of the payment of the refund.

- (c) Assignability. The right of any person to a refund under this Article 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 in the invoice of the sale thereof.
- (d) 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 3-28-80 hereof or were not at retail shall be on the one making such claim under such reasonable requirements of proof as the Finance Director may prescribe.
- (e) Disputed tax. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempted from taxation under this Article, nevertheless, the seller shall collect and the purchaser shall pay the tax, and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the Finance Director, 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.
- (f) Allowed if exempt. A refund shall be made or a credit allowed for the tax so paid under dispute by any purchaser who qualifies for an exemption as provided in this Article. Such refund shall be made by the Finance Director after compliance with the following conditions precedent. Applications for refund must be made within sixty (60) days 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 must be made upon such forms as shall be prescribed and furnished by the Finance Director, which forms shall contain such information as the Finance Director shall prescribe.
- (g) Disallowed. Upon receipt of such application, the Finance Director shall examine the application with all due speed and shall give notice to the applicant, by order, in writing, of the decision thereon. Protest of a denial of refund and request for hearing as provided in Section 3-28-110 hereof shall be submitted in writing to the Finance Director within thirty (30) calendar days from the date of denial of the refund and shall identify the amount of the refund requested and the basis for the protest. The decision made based upon that hearing may be appealed to the Adams County District Court in the manner provided in this Article.
- (h) Payment. If the Finance Director 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, the Finance Director 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. The Finance Director shall issue payment to the taxpayer out of the appropriate City fund provided therefor, provided that the Finance Director shall keep in the vendor's file a duplicate of the voucher and also a statement which shall set forth the reason why such refund shall have been ordered.
- (i) Offset of previous tax due. Whenever it is established that any taxpayer has, for any reporting period, overpaid a tax imposed by this Article and that there is an unpaid balance of tax and interest accrued, according to the records of the Finance Director, owing by a taxpayer for any other reporting period, the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance shall be credited thereto, the remainder shall be applied

against future tax liability or the overpayment shall be refunded as the Finance Director may determine.

- (j) Special refund for undercollection; retailer overpayment of taxes. If any retailer can demonstrate to the reasonable satisfaction of the Finance Director that consistent, diligent application and adherence by the retailer of the bracket system rates results in actual undercollection of the sales tax by the retailer, the Finance Director is authorized to allow the retailer either a credit against future tax liability or a refund of such undercollection as the Finance Director may determine.
- (k) Special refund for estimated payment basis; contractor overpayment of taxes. Application for refund by contractors prepaying on the estimated percentage payment basis under Section 3-28-85 hereof shall be made within eighteen (18) months after the date of purchase and shall be made on forms prescribed and furnished by the Finance Director, which forms shall contain, in addition to the foregoing information, such pertinent data as the Finance Director shall prescribe.
- (l) Special refund to United States and the State. The foregoing notwithstanding, however, applications for refunds submitted by the United States government, the State, its departments or institutions and the political subdivisions thereof, including the City, shall be submitted within eighteen (18) months after purchase of the tangible personal property purchased by any person furnishing work and materials under contract with such governmental units on any of their properties located within the corporate limits of the City.
- (m) 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 in this Article.
- (n) Action to recover fraudulent claims. If any person is 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 Finance Director is empowered and directed to bring appropriate action for recovery of such refunds.
- (o) Taxes paid in error. For transactions consummated on or after January 1, 2003, an application for refund of sales or use taxes paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed and must be supported by documentation as prescribed by the Finance Director.

Sec. 3-28-110. Hearings; appeals.

- (a) Request for hearing; protest. A taxpayer may request a hearing when the City asserts that taxes and any penalties or interest under Section 3-28-95 hereof are due, as stated in a notice of final determination, assessment and demand for payment sent to the taxpayer by the City or when the City denies a taxpayer's claim for refund. The hearing request shall be in writing and shall be received by the Finance Director within thirty (30) days of the date of mailing of a notice of final determination, assessment and demand for payment or of a notice of a denial of refund. This request for hearing shall set forth the factual and/or legal basis for the taxpayer's belief that the assessment or denial is incorrect. A taxpayer's failure to timely request a hearing shall constitute a failure to exhaust local remedies. Any unprotested tax, penalty and interest shall be paid in full within the thirty-day period specified in this Subsection.
- (b) Informal conferences. Upon receipt of a request for hearing, the Department of Finance will contact the taxpayer or the taxpayer's authorized representative to schedule an informal

conference to discuss the procedure to be followed in the administrative hearing, to clarify the relevant issues and facts, and, if possible, to settle the matters in dispute. Participation in the informal conference does not waive any of the taxpayer's or the City's rights under this Section.

- (c) Hearing time and place. The Finance Director shall notify the taxpayer in writing of the time and place for the administrative hearing within thirty (30) days of receipt of the taxpayer's request for a hearing. Such notification shall be mailed no less than thirty (30) days prior to the date of hearing. In all cases, the hearing shall be held in the City at the office of the Finance Director. A final decision thereon shall be issued and the results mailed to the taxpayer within ninety (90) days of the City's receipt of the taxpayer's request for hearing, except that the ninety-day period shall be extended to one hundred eighty (180) days if the taxpayer caused any delay in the holding of the hearing or in the issuance of the decision, and except that the one-hundred-eighty-day period may be waived by the taxpayer.
- (d) Procedures. Hearings before the Finance Director shall be conducted in an informal manner. Formal rules of evidence shall not apply and transcripts or filing of briefs will not be required. The City will supply the taxpayer or representative a procedure booklet entitled "Rules Governing Hearings Before the Finance Director," which outlines the procedural rules to be followed at the hearing.
- (e) Exhaustion of local remedies. The taxpayer's participation in a hearing requested and held pursuant to this Section shall be an exhaustion of all local remedies as defined in Section 29-2-106.1(2)(c), C.R.S.
- (f) Conduct of hearing. The hearing shall be held before the Finance Director. The Finance Director is authorized to administer oaths and take testimony. At the hearing, the taxpayer may assert any facts, make any arguments and file any briefs and affidavits the taxpayer believes pertinent to the taxpayer's cause.
- (g) Request for hearing; time limitation. After the expiration of thirty (30) days from the date of the notice of final determination, assessment and demand for payment or denial of refund, if the tax has not been paid or if no request for hearing has been timely filed, the notice of final determination, assessment and demand for payment previously mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalties, or shall constitute a final denial of refund, as the case may be.
- (h) Adjustment of tax under question. Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions at any hearing, the Finance Director may modify or abate in full any tax, penalty and interest questioned at the hearing or may approve a refund or may uphold the original assessment.
- (i) Determination notices. Upon rejection, in whole or in part, of a claim for refund, or upon a finding by the Finance Director that a valid sales or use tax assessment, in whole or in part, has been made against the taxpayer, the Finance Director shall send, within ten (10) days of said finding, a final determination notice to the taxpayer setting forth the amount of the claim for refund that is denied or the amount of sales and use taxes found still due and owing, stating the grounds for such determination. Unless an appeal is taken as provided in this Section, the taxes, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the date of the final determination notice.
- (j) License revocation. A hearing on the revocation of a City business license shall be held upon reasonable notice to the taxpayer by the Finance Director. The hearing shall be before the Finance

Director. The final determination made by the Finance Director pursuant to the hearing shall be appealable as prescribed in this Section.

- (k) Authority of taxpayer. The taxpayer may appeal a final hearing determination notice issued by the Finance Director pursuant to this Section, provided that the taxpayer files a notice of appeal within thirty (30) days of the mailing of the final hearing determination notice.
- (l) Venue. Venue and jurisdiction to hear and determine appeals is conferred on the Adams County District Court.
- (m) Review of proceedings. The District Court of Adams County shall have original jurisdiction to review the proceedings, such review being conducted after the final determination by the Finance Director in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- (n) Filing of bond. Within fifteen (15) days after filing of the notice of appeal, the taxpayer shall file with the District Court a bond in twice the amount of the taxes, interest and other charges stated which are contested on appeal, provided that the taxpayer may at the taxpayer's option deposit the disputed amount with the Finance Director 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 or when the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the Finance Director and applied against the deficiency or returned in whole or in part to the taxpayer, with interest as prescribed in this Article at one-half percent ($\frac{1}{2}\%$) per month. No claim for refund of the amount so deposited with the Finance Director need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.
- (o) Cases other than license revocation. In all cases other than license revocation, the taxpayer may choose to appeal the hearing determination notice of the Finance Director pursuant to Section 29-2-106.1, C.R.S.

Sec. 3-28-115. Lien; assessments; collection.

- (a) Lien. The sales tax shall be a first and prior lien on the tangible personal property sold, purchased, stored, used, distributed or consumed, subject only to valid mortgage or other liens of record on and prior to the date the notice as required by Subsection (f) of this Section is mailed, and when such tax is collected by retailers or agents, the sales tax imposed by sections under this Article shall be a first and prior lien upon the 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 whatever kind or nature.
- (b) Effect of sale of business; purchases subject to lien.
 - (1) Sale of business. Any person who shall sell out a business or stock of goods or who shall quit business shall be required to make out the return as provided in this Article within ten (10) days after the date the person sold the business or stock of goods or quit business, and such person's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of taxes due and unpaid until such time as the former owner shall produce a receipt from the Finance Director showing that the taxes have been paid or a certificate that no taxes are due.
 - (2) Purchases subject to lien. If the purchaser of a business or stock or goods shall fail to withhold the purchase money as provided in Subsection (b)(1) above and the taxes shall be due and unpaid after the ten-day period allowed, the purchaser, 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 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 such 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, not, however, exceeding the value of the property so taken or acquired.

- (c) Status of unpaid tax in bankruptcy and receivership. Whenever the business or property of any taxpayer subject to this Article 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 Article and for which such taxpayer is in any way liable under the terms of this Article shall be a prior and preferred lien against all the property of such taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the mailing of the notice as provided in Subsection (f) herein on the property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court without first ascertaining from the Finance Director the amount of any taxes due and payable under this Article, and if there are any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of such taxes out of the proceeds of such sale before making payment of any monies to judgment creditor or other claims of whatever nature, except that the costs of the proceedings and other preexisting claims liens as above provided.
- (d) Construction improvements.
 - (1) Lien for unpaid taxes on personal property affixed to real property. The full amount of unpaid taxes arising from and required to be reported on personal property affixed to real property under this Article, together with interest and penalties as provided in this Article, shall be and constitute a first and prior lien, which lien shall have precedence over all other liens of whatever kind and nature, except as to liens for general taxes created by state law and except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the mailing of the notice of tax lien as provided in Subsection (f) herein on the property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer.
 - (2) Final inspection or certificate of occupancy denied unless tax paid. No final inspection shall be made by the City Building Inspector and no certificate of occupancy shall be issued unless all taxes due, as provided in this Article, on all lumber, fixtures and any other building materials and supplies used in or connected with the construction, reconstruction, alteration, expansion, modification or improvement of any building, dwelling or other structure or improvement to real property within the City have been paid or arrangements therefor made with the Finance Director.
- (e) Refusal to file returns.
 - (1) Assessment of taxes. If any person or taxpayer or vendor fails, neglects or refuses to collect the tax or file a return and pay the tax as required by this Article or fails to remit the proper amount of tax or underpays the tax because of negligence, fraud or on a regular basis, the Finance Director may make an estimate based upon such information as may be available and shall add in addition to the tax, penalty and interest as set forth in Section 3-28-95 hereof and promptly thereafter give to the delinquent taxpayer written notice of such estimated taxes,

penalty and interest, which notice of assessment shall be served personally or by mail and which notice of final determination, assessment and demand for payment shall be due and payable thirty (30) days from such service.

- (2) Hearing and appeal. The provisions as to hearings and appeals as set forth in Section 3-28-110 hereof shall apply to such notice of final determination, assessment and demand for payment.
- (f) Notice of tax lien. If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this Article are not paid within thirty (30) days after such are due, the City shall issue a notice to the taxpayer by 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 claims a first and prior lien therefor on the real and tangible personal property of the taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser, whose rights shall have attached prior to the mailing of the notice as provided in this Subsection on property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer. The attachment of such lien is not dependent on the recording of the written notice. The lien remains attached to the property from the date the notice as required herein is mailed until the amounts due are paid. In no event shall failure of the taxpayer or responsible person to receive notice as required herein void the lien provided for in this Section.
- (g) Issuance of distraint warrant; filing of lien. Notice of lien shall be on forms prescribed by the Finance Director, whose duties are the collection of such tax and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property. The Finance Director may issue a distraint warrant as provided in Subsection (i) of this Section at any time when taxes that are due remain unpaid, regardless of whether a notice of tax lien has been issued.
- (h) Jeopardy assessment and distraint.
 - (1) Jeopardy enforcement. If the Finance Director finds that collection of the tax will be jeopardized by delay, in the Finance Director's sole discretion, the Finance Director 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 Finance Director may proceed immediately to collect such tax as provided in Subsection (i) below.
 - (2) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the Finance Director may immediately issue demand for payment; and, regardless of the provisions of Section 3-28-110 hereof, the tax shall be due and payable forthwith and, in the Finance Director's sole discretion, the Finance Director may proceed immediately to collect the tax as provided in Subsection (i) of this Section.
 - (3) Security for payment. Collection under either Paragraph (1) or (2) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the Finance Director.
 - (4) Filing and release of lien. Any employee, agent or representative of the City Manager to whom a distraint warrant has been directed may file a notice of lien in such forms as the Finance Director may prescribe with the person in possession of any personal property or right to property belonging to the taxpayer. The Finance Director may release the lien as to

any part or all of the property or rights to property covered by any such lien upon such terms as the Finance Director may deem proper.

(i) Methods of enforcing collection.

- (1) Issuance of distraint. The Finance Director may issue a warrant under the Finance Director's own hand directed to any employee, agent or representative of the Finance Department, sometimes referred to collectively in this Section as "agent" or "revenue collector" or to any sheriff of any county in the State, commanding such person to distrain, seize cash and cash equivalents, and/or 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:
 - a. When any deficiency in tax is not paid within thirty (30) days from the mailing of notice of final determination, assessment and 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 such period;
 - b. 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
 - c. Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment as provided in Subsection (h) above.
- (2) Distraint seizure; advertisement of sale. 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 the owner's or possessor's usual place of abode with some member of the owner's or possessor's family over the age of eighteen (18) years or at the owner's or possessor's usual place of business with the owner's or possessor's 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; and 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 newspaper or on a publicly accessible web page within the City, or, in lieu thereof and in the discretion of the Finance Director, the agent or sheriff shall cause such notice to be publicly posted at the Brighton City Hall, and copies thereof to be posted in at least two (2) other public places within the City. 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. The sale may be adjourned from time to time by such agent or sheriff if it is deemed advisable, but not for a time to exceed a total of ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and 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 such to be purchased by such agent or sheriff for the City. The property so purchased may be sold by the agent or the sheriff under such regulations as may be prescribed by the Finance Director. In any case of distraint for the payment of 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 evidence satisfactory to the Finance Director of right of possession.

- (3) Certificate of sale; evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall 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 the agent's or sheriff's proceedings in making the sale and shall transfer to the purchaser all right, title and interest in and to the property sold; and 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 the transfer, and the certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and 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 such as against any other person. 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 Finance Director shall render an account in writing of the sale.
 - (4) Filing and release of lien. Any employee, agent or representative of the City Manager to whom a distraint warrant has been directed may file a notice of lien in such forms as the Finance Director 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 Finance Director may release the lien as to any part or all of the property or rights to property covered by any such lien upon such terms as the Finance Director may deem proper.
 - (5) Lien released. Any lien for taxes as shown on the records of the County Clerk and Recorder as provided in this Section, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Finance Director in the same manner as mortgages and judgments are released.
- (j) Recovery of unpaid tax by action at law.
- (1) Action at law. The Finance Director 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 Finance Director may receive at law the amount of such taxes, penalties and interest in such county or district court of the county wherein the taxpayer resides or has a principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the Finance Director as provided in this Article shall be prima facie proof of the amount due.
 - (2) 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 Finance Director nor shall any sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings, and the Finance Director 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 Finance Director, to commence action for the recovery of taxes due

under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

- (3) 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 notice shall have been mailed as provided herein and which creates a lien upon any real property for such tax, the Finance Director may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to such 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 the City. The proceedings in such action, 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.
- (k) City as 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 Finance Director or any other person permitted by law shall be sufficient service and binding upon the City.
- (l) Certificate of discharge.
 - (1) 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 Finance Director may issue a certificate of discharge of any part of the property subject to the lien if the Finance Director 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.
 - (2) 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 Finance Director may issue a certificate of discharge for any part of the property subject to the lien if there is paid over to the Finance Director, in part satisfaction of the liability in respect to such tax, an amount determined by the Finance Director which shall not be less than the value, as determined by the Finance Director, of the interest of the City in the part to be so discharged.
 - (3) Determination of values. In determining such values, the Finance Director shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the City.
 - (4) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subparagraph (1) above 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 nor property not specified in the release.
- (m) Summons to court for violation of Article. The Finance Director may, at the discretion of the Finance Director, summon to Municipal Court any person who may be in violation of this Article as set forth in Section 3-28-100 hereof and elsewhere in this Article.
- (n) Closing agreements.

- (1) Satisfaction of liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships or corporations in the process of dissolution or which have been dissolved, the Finance Director may agree with the fiduciary or director upon the amount of taxes due from the decedent, the decedent's estate, the trust, receivership or other fiduciary relationship or corporation for any of the fiduciary's or director's or its taxable periods under the provisions of the taxes covered by this Article 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.
- (2) Personal liability. Except as provided in Paragraph (4) below, 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 such person's control without having first paid any taxes covered by this Article due from such decedent's estate, trust estate, receivership or corporation covered by this Article and which may be assessed within the time limited by this Article 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 Article and which may be assessed within the time limited by this Article.
- (3) 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, fund or corporation shall be liable to the extent of the decedent, trust estate, fund or corporation covered by this Article and which may be assessed within the time limited by this Article. 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.
- (4) Limitation of liability.
 - a. In case the tax imposed by this Article is due from a decedent or the decedent's estate or by a corporation, in order for personal liability under Subparagraph (2) above 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.
 - b. This Subsection will not apply in the case of a corporation unless:
 1. Such request notified the Finance Director that the corporation contemplates dissolution at or before the expiration of such eighteen-month period.
 2. The dissolution is begun in good faith before the expiration of such eighteen-month period.
 3. The dissolution is completed.
 - c. Upon the expiration of the eighteen-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 Subparagraph (2) above.

Sec. 3-28-125. Coordinated audit.

- (a) Any taxpayer licensed in this City pursuant to Section 3-28-140 hereof and holding a similar business license in at least four (4) other Colorado municipalities that administer their own sales tax collection may request a coordinated audit as provided in this Section.
- (b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, by 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 municipalities utilizing local collection of their sales tax in which the taxpayer holds a current business 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 Subsection (g) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of limitation under Section 3-28-120 hereof may be audited by this City during the twelve (12) 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 who submits a complete request for a coordinated audit pursuant to Subsection (c) above, the Finance Director shall so notify the Finance Director of the municipality whose notice of audit prompted the taxpayer's request within ten (10) 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 the 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 the ordinance from which this Section derives;
- (3) When a taxpayer refuses to promptly sign a waiver of Section 3-28-120 hereof; or
- (4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Subsection (b) above.

Sec. 3-28-170. Renewal of license; licensee's duties.

So long as this Article remains in effect, it shall be the duty of each licensee, to obtain a renewal of such license on or before the license expiration date if the licensee remains engaged in business in the City. A business license shall not be renewed unless the proposed business and location comply with this Code.

Sec. 3-28-200. Exception to license.

- (a) No license shall be required for infrequent sales of tangible personal property at the residence of the owner of the property to be sold if the property was originally purchased for use by members of the household where the sale is conducted and no person other than such household members conducts all or any portion of the sales
- (b) No license shall be required under this article for a contractor who:
 - (1) has obtained a contractor license pursuant to Chapter 16 of Article 15 of this Code;
 - (2) does not directly, indirectly, or by a subsidiary maintain a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; and
 - (3) does not own, lease, rent, or otherwise exercise control over real or personal property within the taxing jurisdiction.