



## ORDINANCE NO. 22-17

### REPEALING AND REENACTING CHAPTER 3.08 – SALES TAX OF THE AVON MUNICIPAL CODE

**WHEREAS**, the Town of Avon, Colorado (“**Town**”) is a home rule municipality and political subdivision of the State of Colorado (“**State**”) organized and existing under a home rule charter (“**Charter**”) pursuant to Article XX of the Constitution of the State; and

**WHEREAS**, pursuant to C.R.S. §31-15-103 and §31-15-104, and pursuant to the home rule powers of the Town, the Avon Town Council (“**Council**”) has the power to make and publish ordinances necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of its inhabitants; and

**WHEREAS**, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the Town and is necessary to raise revenue with which to conduct the affairs and render the services performed by the Town; and

**WHEREAS**, pursuant to such authority, the Town has adopted and enacted a Sales Tax Code, under which Town sales tax is levied on sales and purchases of tangible personal property or taxable services at retail; and

**WHEREAS**, the individual Sales Tax Code provisions, as set out in Chapter 3.08 of the Avon Municipal Code, have not been reviewed and updated as a whole for many years; and

**WHEREAS**, a clear and coherent set of tax provisions are beneficial to both retailers and consumers alike, and will contribute to administrative efficiency; and

**WHEREAS**, the delivery of tangible personal property, products, or services into Avon relies on local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services, the cost of which is defrayed by sales tax; and

**WHEREAS**, Council finds that repeal and re-enactment of Chapter 3.08 will promote the health, safety, and general welfare of the Avon community; and,

**WHEREAS**, approval of this Ordinance on first reading is intended only to confirm that the Council desires to comply with the requirements of Section 6.5(d) of the Avon Home Rule Charter by setting a public hearing to provide the public an opportunity to present testimony and

evidence and that approval of this Ordinance on first reading does not constitute a representation that the Council, or any member of the Council, has determined to take final action on this Ordinance prior to concluding the public hearing on second reading.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO:**

**Section 1. Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Council.

**Section 2. Repealed and Reenacted.** Avon Municipal Code Sections 3.08.010 through and including 3.08.410, are hereby repealed and reenacted in their entirety to read as set forth in the attached Appendix 1, with ~~strike-out~~ indicating language to be deleted and underline indicating language to be adopted.

**Section 3. Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

**Section 4. Effective Date.** This Ordinance shall take effect thirty (30) days after the date of final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

**Section 5. Safety Clause.** The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 6. Codification Amendments.** The codifier of the Town’s Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 7.**     **No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**Section 8.**     **Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

***[SIGNATURE PAGE FOLLOWS]***

**INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING** on \_\_\_\_\_ 2022 and setting such public hearing for \_\_\_\_\_ 2022 at the Council Chambers of the Avon Municipal Building, located at 100 Mikaela Way, Avon, Colorado.

BY:

ATTEST:

\_\_\_\_\_  
Sarah Smith Hymes, Mayor

\_\_\_\_\_  
Brenda Torres, Town Clerk

**ADOPTED ON SECOND AND FINAL READING** on \_\_\_\_\_ 2022

BY:

ATTEST:

\_\_\_\_\_  
Sarah Smith Hymes, Mayor

\_\_\_\_\_  
Brenda Torres, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karl Hanlon, Town Attorney

## **CHAPTER 3.08 - Sales Tax**

### **3.08.010 - Words and phrases defined.**

The following words and phrases as used in this Chapter shall have the following meaning unless from the context it clearly appears that a different meaning is indicated:

*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.

*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.

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

*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.

*Charitable organization* means any entity which has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code.

*City or Town* means the municipality of Avon.

*Coin-operated device* means any device operated by coins or currency or any substitute therefor.

*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.

*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.

*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.

*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.

*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 that do not remain as an integral and inseparable part of a completed structure or project, are not construction materials.

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

*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.

*Cover charge* means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

*Day* means calendar day unless otherwise specified.

*Digital code* means code that provides a buyer with a right to obtain one or more digital product. It may be obtained by any means, including in tangible form such as a card or on-line, such as through electronic mail or messaging.

*Digital product* means an electronic product including, but not limited to:

- a. "Digital images," which means works that include, but are not limited to, those generally recognized in the ordinary and usual sense as "photographs," logos," cartoons," or drawings."
- b. "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.
- c. "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.
- d. "Digital books," which means works that are generally recognized in the ordinary and usual sense as "books."

*Distribution* means the act of distributing any article of tangible personal property 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.

*Economic nexus* means the connection between the Town and a person not having a physical nexus with the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and:

- a. In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c); or
- b. In the current calendar year, ninety (90) days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c).

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

*Engaged in business in the Town* means performing or providing services or selling, leasing, renting, delivering, or installing tangible personal property, products, or services for storage, use or consumption within the Town. *Engaged in business in the Town* includes, but is not limited to, any one (1) 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 Town of Avon; b. Sends one (1) or more employees, agents or commissioned salespersons into the Town of Avon 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 (1) or more employees, agents or commissioned salespersons on duty at a location within the Town of Avon; d. Owns, leases, rents, or otherwise exercises control over real or personal property within the Town of Avon; e. A retailer who is physically present in Colorado but not in the Town of Avon and who, within any twelve-month period, makes more than one (1) retail-sale delivery into the Town by any means including common carrier or makes a single sale of at least \$10,000 in the Town, delivered by any means including common carrier; or f. Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in this section.

*Finance Director, Director of Finance, or Director* means the Finance Director of Avon or such other person designated by the municipality; *Finance Director* shall also include such person's designee.

*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.

*Internet access services* means services that provide or enable computer access by multiple users to the Internet but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet access services.

*Internet subscription services* means software programs, systems, data, and applications available online through rental, lease, or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering, or record compiling.

*License* means an Avon sales tax license.

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

*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, condominium unit, timeshare unit, residence apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park or similar establishment, for a period of fewer than thirty (30) days under any concession, permit, right of access, license to use, other agreement or otherwise.

*Machinery* means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

*Manufacturing* means the operation and 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.

*Marketplace* means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

*Marketplace facilitator:*

**a.** Means a person who:

(1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;

(2) Engages directly or indirectly, through one (1) or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and

(3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

**b.** Marketplace facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

*Marketplace seller* means a person, regardless of whether or not the person is engaged in business in the Town, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

*Medical supplies* means prescription drugs for humans, prosthetic medical and dental appliances for humans and special beds for human patients with neuromuscular or similar debilitating



ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses (including eyeglass frames), and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient, hearing aids, hearing aid batteries, insulin, insulin-measuring and -injecting devices, glucose to be used for treatment of insulin reactions and human whole blood, plasma, blood products and derivatives. This exemption excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

*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.

*Multichannel seller* means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

*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.

*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.

*Photovoltaic System* means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

*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.

*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.

*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 the materials uses, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Chapter, 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 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, 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 at the time of sale. 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 at the time of sale 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;

- 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 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.

*Prosthetic devices for animals* means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include but are not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, oxygen concentrators with related accessories.

*Prosthetic devices for humans* means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; 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 with related accessories.

*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, 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 or other taxable products or taxable services;
- 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 or services, other taxable products, or services.

The terms purchase and sale do not include:

- a. A division of partnership assets among the partners according to their interests in the partnership;
- b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;
- c. 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;
- d. 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;
- e. A transfer of a partnership interest or limited liability company;
- f. 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;
- h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- i. The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- j. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the parent company or the subsidiary which received the assets;
- k. 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 Chapter 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 shall constitute a sale. For the purposes of this Paragraph, a closely held subsidiary company is one in which the parent company owns stock possessing at least eighty percent (80%) of the

total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

*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.

*Resident* means a person who resides or maintains one (1) or more places of business within the Town, regardless of whether that person also resides or maintains a place of business outside of the Town.

*Retail sales* means all sales except wholesale sales.

*Retailer* or *vendor* 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:

- 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 organization 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 or 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;
- e. Marketplace facilitator, marketplace seller, or multichannel seller.

*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.

*Return* means any form prescribed by the Town administration for computing and reporting a total tax liability.

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

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

*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.

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

*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.

*Software program* means a sequence of instructions that can be measured, interpreted, and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes:

- (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer;
- (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf ("COTS")," "mass produced," or "standardized;"
- (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
- (4) The generic term "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

*Solar thermal system* means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.

*Sound system services* means the provision of broadcast or pre-recorded 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.

*Storage* means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, 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 Town from any person or vendor.

*Tangible personal property* means personal property that can be one (1) or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses. *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.

*Tax 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.

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

*Taxable services* means services subject to tax pursuant to this Code.

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

*Telecommunications service* means the service of which the object is 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, 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.

*Therapeutic device* means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality.

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

*Use* means the exercise, for any length of time by any person within the Town 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 Town from any person or vendor or used in the performance of a contract in the Town whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

*Wholesale sales* means sale by wholesalers to retailers, jobbers, dealers or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this Chapter.

*Wholesaler* means any person doing an organized wholesale or jobbing business and selling to retailers, jobbers, dealers or other wholesalers, for the purpose of resale, and not for storage, use, consumption or distribution.

( [Ord. No. 20-09](#) , § 2; Ord. 17-04 §2 (Exh.A); Ord. 93-6 §1; Ord. 91-7 §1)

### **3.08.020 - Taxable items.**

There shall be collected and paid as a tax the amounts stated in Section 3.08.030 upon the following:

- (1) The purchase price paid or charged upon all retail sales and purchases of tangible personal property within the boundaries of the Town;
- (2) The amount paid for all meals, including cover charges, if any, furnished in any restaurant, eating house hotel, drugstore, club, resort, or such place at which meals or food are sold to the public.
- (3) The rental fee, price, or other consideration paid for the rental of any tangible personal property within the boundaries of the Town. Rentals shall include, but not be limited to, ski rentals, car rentals, and DVD rentals. Such rentals, for all purposes of this Chapter, shall be deemed to be sales as defined in Section 3.08.010.
- (4) The purchase price paid or charged upon all retail sales and purchases of tobacco products as defined Section 5.10.030.

( [Ord. No. 20-09](#) , § 3; Ord. No. [19-02](#) , § 2; Ord. 85-27 §1; Ord. 82-27 §1(part))

3.08.030 - Sales tax levy.

(a) There is imposed upon all sales of all items specified in Section 3.08.020 within the boundaries of the Town a tax equal to four percent (4%) of gross receipts derived from sales of tangible personal property and taxable services pursuant to this Chapter except that the sales tax imposed on tobacco products shall be forty percent (40%). Notwithstanding the foregoing, cigarettes shall not be subject to the sales tax imposed here but shall be subject instead to the cigarette excise tax imposed pursuant to Section 3.10.020.

(b) A sales tax is also imposed on the rental fee, price, or other consideration paid or received for lodging services. This tax shall be levied irrespective of the location from which the reservation for the lodging, rental, or lease is made. The tax levied shall be based on the same schedule as is set forth in subsection (a) of this Section, and the person, partnership, corporation, or other entity making such rooms available shall, for all purposes of this Chapter, be deemed to be a *retailer* as defined in Section 3.08.010.

(c) The retailer shall add the tax imposed thereto to the sale or charge of the item sold, showing such tax as a separate and distinct item, and, when added, such tax shall constitute a part of such price or charge, shall be a debt from the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as other debts. A retailer selling malt, vinous, or spirituous liquors by the drink or vending items through coin-operated vending machines may include in the drink or vended-item purchase price the tax imposed by this chapter, but such retailer shall not advertise or hold out to the public that the tax is absorbed or otherwise not included as part of the sales price to the consumer.

(d) In lieu of the tax levied by subsection (a) of this Section, there is levied upon all sales of electrical energy, gas, steam or other heat, and telegraph or telephone services within the boundaries of the Town a tax equal to one percent (1%) of the gross receipts derived from sales of these services. Said tax shall be imposed on the sale or charge of the service, showing such tax as a separate and distinct item, and, when added, such tax shall constitute a part of such price or charge. This tax shall be in addition to any franchise tax levied against said utilities.

(e) It shall be unlawful for a retailer not to collect and for a purchaser not to pay any sales tax levied by this Section.

(f) Specific transactions subject to tax include, but are not limited to, the following:

(1) Sales of tangible personal property, including food or drink, dispensed from a coin-operated device, also known as vending machine.

(2) Sales of software programs, software as a service, software license fees, and software maintenance agreements.

(3) Sales of tangible personal property by a retailer-contractor, the total price of which shall be subject to sales tax, excluding only separately stated labor and installation charges if any.

(4) Internet subscription services.

(5) Sales of digital product and digital code. Digital product is a form of tangible personal product, the taxability of which is not impacted by the method of delivery. Examples of delivery methods include but are not limited to compact disc, electronic download, and internet streaming.



- (6) Show sales or rental made through a cable television system.
- (7) Pay-per-view show sales or rental.
- (8) Linen services.
- (9) Security system services.
- (10) Sound system services.

(Ord. No. [19-02](#), §3; Ord. 91-7 §2; Ord. 85-24 §1; Ord. No. [19-10](#) §2)

**3.08.035 - Tax credit for The Village (at Avon).**

Notwithstanding any other provisions of this Chapter, there shall be granted to each person owing tax on sales consummated within The Village (at Avon) a temporary tax credit equal to the amount of any Retail Sales Fee paid by or on behalf of such person for that same sale. The amount of the credit shall not exceed the amount of tax owed. This credit shall expire with the termination of the Retail Sales Fee as set out in the Consolidated, Amended and Restated Annexation and Development Agreement for The Village (at Avon), as recorded with Eagle County on August 1, 2014. Neither the ability of the Town to grant the temporary tax credit nor termination of the tax credit shall constitute a tax increase, the imposition of a new tax, or a tax policy change.

(Ord. 02-06 §1; Ord. 99-02 §4)

**3.08.036 - Tax credit for Community Housing.**

Notwithstanding any other provision of this Chapter, there may be granted a sales tax credit to each person owing tax on the sale of building materials and fixtures used in a Community Housing project provided that such sales tax credit is approved by Council by resolution in accordance with Chapter 3.14. Neither the ability of the Town to grant this tax credit nor the repeal or termination of this tax credit shall constitute a tax rate increase, the imposition of a new tax or a tax policy change.

(Ord. No. [19-01](#), §2)

**3.08.037 - Temporary tax credit for renewable energy production components.**

Notwithstanding any other provision of this Chapter, there shall be granted a temporary sales tax credit to each person owing tax on the sale of components used in the production of electricity, generation of heat or cooling of air, from a renewable energy source, including but not limited to wind, solar, solar thermal systems, and geothermal energy systems, provided that this temporary tax credit shall commence on the effective date of this ordinance and shall continue until December 31, 2024, whereupon this temporary tax credit shall automatically expire unless extended by adoption of an ordinance. Neither the ability of the Town to grant the temporary tax credit nor the termination of the credit shall constitute a tax increase, the imposition of a new tax or a tax policy change.

(Ord. No. [18-15](#), §2; Ord. [16-03](#) §2)

3.08.040 – Place of sale – Destination sourcing

- (a) A purchase or sale is deemed to occur where transfer of possession of taxable property, or consumption of a taxable service, first occurs.
- (b) The following rules shall be used to establish that site of transfer:
  - (1) If a purchaser takes possession of property or consumes services at the physical location of the retailer, then the sale occurs there and that location's tax applies.
  - (2) If a purchaser takes possession of property or consumes services at a place other than the retailer's physical location, then the sale is deemed to occur in the following locations in descending order of application:
    - a. An address to which property is delivered, or services are consumed, no matter the method of delivery;
    - b. The purchaser's business or residential address if known from an ordinary course of business with the retailer;
    - c. The purchaser's payment instrument address; or,
    - d. The address from which property is shipped.
  - (3) If the purchaser designates delivery to another recipient, then the sale is deemed to occur at the location that recipient first takes possession of the property or consumes the service.
- (c) These rules do not apply if the address is used in bad faith. They apply to both in-state and out-of-state sale sites.
- (d) Digital product and code sales shall be sourced as follows:
  - (1) The sale is presumed to be made at the customer tax address.
  - (2) "Customer tax address," as used here means, in descending order of application:
    - a. The retailer's business location if the product or code is received there;
    - b. The primary use location, if the retailer knows that address;
    - c. The location where the digital product is received by the purchaser or designee, if that address is known to the retailer and is maintained in the ordinary course of the retailer's business;
    - d. An address for the purchaser available from the retailer's business records maintained in the ordinary course of business, if the address does not constitute bad faith;
    - e. The purchaser's address provided during consummation of the sale, including the address of the purchaser's payment instrument, when use of that address does not constitute bad faith; or
    - f. The location in the United States of the retailer's business headquarters; or, if unavailable, the location in the United States where the retailer has the greatest number of employees; or, if unavailable, the location in the United

States from which the retailer makes digital products and code available for electronic transfer.

(3) “Primary use location,” as used here, means the physical address where use of the product or code will primary occur, as determined by:

- a. The residential or business street address of the actual end user, including, if applicable, any recipient designated by the purchaser; or
- b. If the purchaser is not an individual, the location of the purchaser’s employees or equipment that makes use of the digital product.

(e) The Director may develop additional sourcing rules, consistent with this Section, as needed to administer this Chapter.

### **3.08.050 - Exempt items.**

The sale of the following classes of tangible personal property are exempt from the tax imposed by this Chapter.

- (1) Motor vehicles, trailers, and semi-trailers, registered outside of Town;
- (2) Sales of tangible personal property where both the following conditions exist:
  - a. The sales are to persons who are residents of, or doing business in, the State but outside of Town, and
  - b. The purchased items are to be delivered to the consumer outside Town boundaries by any method, including common or contract carrier, seller conveyance or U.S. mail.
- (3) Fuel used for the operation of internal combustion engines;
- (4) Medical supplies, prosthetic devices for humans, and therapeutic devices;
- (5) Goods manufactured within the Town and sold directly by the manufacturer to a common carrier operating in interstate commerce as the ultimate consumer thereof;
- (6) Construction and building materials if such materials are picked up by the purchaser and if the purchaser presents to the retailer a building permit or other documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid;
- (7) Commercial packaging materials; and
- (8) Newspapers as defined in Section 3.08.010.

( [Ord. 17-04](#) §3; Ord. 91-7 §§3, 4; Ord. 85-28 §1, 1985; Ord. 82-27 §1(part))

### **3.08.060 - Exempt taxpayers.**

(a) Sales to the following classes of taxpayers shall be exempt from the tax imposed by this Chapter:

- (1) Sales to the United States government; to the State, its departments or institutions and to the political subdivisions thereof, in their governmental capacity only; in all sales to the Town; providing, however, that no commercial, industrial or other banking institution, organized or chartered by the United States government, any agency or

department thereof, or by the State, shall be considered a governmental institution for the purpose of this exemption; and

(2) Sales by or to charitable organizations in the conduct of their regular charitable functions and activities.

(b) Nothing herein contained shall be deemed to exempt sales of building material or supplies to be used by a contractor for the construction of an improvement for any of the institutions or agencies enumerated in subsection (2) above.

(c) Taxpayers entitled to exemption hereunder may apply to the Town for an Exemption Certificate, which certificate shall serve as notice to all retailers of the Taxpayer's exemption status under this Section.

( [Ord. 16-08](#) §2; Ord. 93-6 §2; Ord. 82-27 §1(part))

### **3.08.065 – Exempt charges**

The following charges shall be exempt from the tax imposed by this Chapter:

(1) The retail delivery fee consisting of the community access retail delivery fee imposed by Section 24-38.5-303(7), C.R.S. (2021);

(2) The clean fleet retail delivery fee imposed by Section 25-7.5-103(8), C.R.S. (2021);

(3) The clean transit retail delivery fee imposed by Section 43-4-1203(7), C.R.S. (2021);

(4) The retail delivery fee imposed in Section 43-4-218(3), C.R.S. (2021);

(5) The bridge and tunnel retail delivery fee imposed by Section 43-4-805(5)(g.7), C.R.S. (2021);

(6) The air pollution mitigation retail delivery fee imposed by Section 43-4-1303(8), C.R.S. (2021);

(7) The carryout bag fee imposed by Section 25-17-505, C.R.S. (2021);

(8) The disposable bag fee imposed by Section 8.38.040 of this Municipal Code.

### **3.08.070 - Burden of proving exemptions—disputes.**

The burden of proof that a retailer is exempt from collecting and remitting tax, or filing a return, pursuant to this Chapter is on the retailer asserting such exemption under such reasonable requirements of proof as the Director may prescribe. A purchaser claiming an exemption disputed by a retailer may pay the tax under protest and apply for refund pursuant to Section 3.08.160. In the event the Town refunds taxes pursuant to exemption, it may collect from the retailer any amount of taxes retained as a fee attributable to the transaction.

(Ord. 82-27 §1(part))

### **3.08.080 - Unlawful to advertise absorption of tax.**

It is unlawful for any retailer to advertise, to hold out, or to state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this Chapter will be

assumed or absorbed by the retailer, or that it will not be added to the selling price of the property sold; or if added, that any part thereof will be refunded.

(Ord. 82-27 §1(part))

**3.08.090 – Sales Tax License.**

(a) It is unlawful for any person to be engaged in business in the Town as defined at Section 3.08.010 by way of making retail sales without first obtaining a sales tax license, which license shall be granted and issued by the Director and shall remain in force and effect until suspended or revoked.

(b) The Director may suspend or revoke a sales tax license for persistent violation of this Code. The Director shall first notify the licensee in writing of an intention to suspend or revoke the license, giving the licensee 30 days to remedy the violations. If no remedy is made, the Director may suspend or revoke this license upon final notice to the licensee. A licensee who disputes the Director's final notice may appeal as set out at Section 5.04.120 of the Avon Municipal Code.

(Ord. 82-27 §1(part))

**3.08.100 - When license not required.**

No license shall be required for any person engaged exclusively in the business of selling items exempt from taxation under this Chapter.

(Ord. 82-27 §1(part))

**3.08.110 - Itinerant vendors.**

Any retailer who does not intend to be actively engaged in selling for a period greater than three (3) consecutive months must first obtain an itinerant-vendor sales tax license and deposit with the Director a cash bond in the amount of one hundred dollars (\$100.00) for the benefit of the Town, in such form as may be approved by the Director, which bond shall be conditioned upon, and authority for, the payment of the retail sales taxes due or to become due. Such itinerant vendors shall make reports of the tax collected and shall remit the same to the Town upon such forms and at such times as the Director may require. A failure to make such report or to pay any tax due at the time specified shall cause an immediate suspension to the license and forfeiture of the bond posted.

**3.08.120 - Duty to keep books and records.**

It shall be the duty of every person required to obtain a Sales Tax License to keep and preserve suitable records of all sales made by him or her, plus such other books or accounts as may be necessary to determine the amount of tax he or she may be liable for. It shall be the duty of every such person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale. All such books, invoices, accounts, and other records as required herein shall be open for examination at any time by the Director or his or her duly authorized agents.

(Ord. 82-27 §1(part))

**3.08.130 - Sales tax return.**

(a) Every person required to obtain a Sales Tax License pursuant to the provisions of Section 3.08.090 shall file a sales tax return upon forms approved by the Director on or

before the twentieth day of each calendar month for the sales activities of the preceding calendar month; providing, however, that if the accounting methods regularly employed by the retailer in the transaction of his or her business, or other conditions, are such that reports of sales made on a calendar-monthly basis will impose unnecessary hardship, the Director may, in his or her sole discretion, accept reports at a different interval so long as the change will not jeopardize collection of the tax; and provided further, that a retailer doing business in two (2) or more places or locations may file one (1) return covering all such business activities in the Town.

(b) The returns so filed shall contain such information as may enable the Director to accurately determine the amount of tax collected by the person filing the return, but, in all cases, shall contain the following information:

(1) The amount of gross taxable sales made for which the return is filed;

(2) The total sales price of all property returned by the purchaser as a result of a return of goods sold by the retailer, provided the original sale was a taxable transaction;

(3) The total fair market value of any property received by the retailer resulting from an exchange of property provided the property received is held by the retailer to be sold or leased to a user or consumer in the regular course of business;

(4) The total amount of sales exempt from tax pursuant to Sections 3.08.050 and 3.08.060;

(5) The total amount of sales made on credit, the obligation for which is not secured by a conditional sales contract, chattel mortgage, or other security instrument entitling the retailer to repossess the item sold, which credit sales are found to be worthless and are deductible as bad debts on the retailer's federal income tax return.

(c) The return shall be accompanied by an amount equal to the sales tax required to be collected but which shall not be less than the amount actually collected nor less than four percent (4%) of the figure derived by subtracting from gross taxable sales the total amount of sales described in subsections (b)(2), (3), (4) and (5) of this Section, all as reflected on the return.

(d) All other persons shall pay the amount of any tax due under the provisions of Section 3.08.030 not less than fifteen (15) days after the date that the tax becomes due.

#### 3.08.140 – Unlawful Acts

It is unlawful for any person to fail to perform any affirmative duty required by this Chapter, or to willfully make, prepare, or submit a tax return or other document containing any false statement, or to willfully make a false statement in any investigation or hearing, which may affect the tax liability of any person, or to violate a rule or regulation promulgated pursuant to Section 3.08.350.

(Ord. 87-24 §1; Ord. 83-14 §1; Ord. 82-27 §1(part))

#### **3.08.150 - Examinations of returns—refunds—deficiencies—notice of protest.**

(a) The Director may examine any return to assess the accuracy of amounts remitted.

(b) If the amount remitted is more than is due under the return, the Director may, in his or her sole discretion, credit the entire amount against future tax obligations unless the taxpayer seeks refund. If the Director notifies a taxpayer of any overpayment, the taxpayer may submit a refund claim or file an amended return within thirty (30) days of such notice, after which time the right to a refund shall terminate.

(c) If the amount paid is less than the amount due, or if the Director determines that tax is due and unpaid for any reason, then the Director shall send a notice of deficiency and demand for payment to the taxpayer, including interest and penalty. Payment shall be due within fifteen (15) days of the date of the notice.

(d) If the taxpayer disputes an amount demanded by the Director, the taxpayer shall provide the Director with a written protest within thirty (30) days of the Director's notice and demand. The protest shall identify the amount of tax disputed, including specific grounds for dispute, and shall request a hearing before the Director. This protest process, and that of any related appeal, shall be in accordance with Section 29-2-106.1, C.R.S.

(e) Payment of a bond or tax in lieu made pursuant to appeal shall be as set out in Sections 29-2-106.1(3) and (8), C.R.S.

(Ord. 91-7 §7; Ord. 86-2 §14; Ord. 82-27 §1(part))

**Sec. 3.08.160 – Refunds - procedure; taxes paid under protest or by mistake.**

(a) A consumer claiming an exemption disputed by a retailer may pay the tax under protest. Applications for a refund of such a protested tax must be made within sixty (60) days after the sale or event for which an exemption is claimed and must be supported by the consumer's affidavit plus the original paid invoice or sales receipt and certificate issued by the seller plus additional information as the Director may request.

(b) A taxpayer claiming refund for tax paid by mistake or in error must make that claim within three (3) years from the date of sale. A consumer seeking such refund must first request it from the retailer collecting the tax and provide the Director with the reason the retailer denied the claim.

(c) All claims for refund shall be upon forms prescribed by the Director and made in such manner as required by the Director. The Director shall promptly review refund claims and issue a denial in writing, stating the reason therefor, or provide the funds requested, after applying any refund amount against outstanding tax liabilities.

(d) If a taxpayer disputes a refund denial, the taxpayer shall provide the Director with a written protest, filed within thirty (30) days of the Director's notice. The protest shall identify specific grounds for dispute, including any necessary documentation, and shall request a hearing before the Director. This protest process, and that of any related appeal, shall be in accordance with Section 29-2-106.1, C.R.S.

(Ord. 91-7 §§9, 10; Ord. 82-27 §1(part))

**Sec. 3.08.170 - Refund not assignable; retailer may file claim.**

(a) The right of any person to a refund shall not be assignable, and application must be made by the same person who purchased the goods and paid the tax thereon, as shown by the sales

invoice or other appropriate document, except that a retailer may claim a refund on behalf of a consumer if:

1. The consumer could file a refund claim on his or her own behalf; and
2. The retailer establishes to the Director's satisfaction that the retailer has paid or will pay the amount claimed to the consumer.

(b) No retailer shall be compelled to file a refund claim pursuant to this Chapter.

(Ord. 82-27 §1(part))

### **3.08.180 – Penalty and interest on late returns and tax deficiencies**

(a) If a tax return is filed late, or a tax payment is made late, then a one-time penalty of the greater of \$15 or 10% of the tax due shall be added to the total tax obligation.

(b) If a tax payment made is less than the amount owed, and the deficiency is due to negligence or disregard of authorized rules and regulations but without intent to defraud, then simple interest shall be charged on the deficiency amount at the rate of one and one-half percent (1½%) per month, commencing on the date the payment was first due unless that payment due date is extended by the Director. A one-time penalty of the greater of \$15 or 10% of the tax due shall be added to the total tax obligation.

(c) If a tax payment made is less than the amount owed, and the deficiency is due to fraud with the intent to evade tax, a penalty of one hundred percent (100%) of that part of the tax deficiency amount shall be added to the total tax obligation including the penalty and interest required by subsections (a) and (b), plus additional interest charge of three percent (3.%) per month added from the date the payment was first due.

(d) Interest shall be paid upon notice and demand. It shall be assessed, collected, and paid in the same manner as the tax to which it applies.

(e) If any portion of tax is satisfied by overpayment credit, then interest may be imposed only on tax due net of overpayment credit applied.

### **3.08.190 - Estimated taxes and assessment thereof.**

(a) If any person neglects or refuses to make a return for, or payment of, any of the taxes levied by this Chapter when the same become due, the Director shall, no sooner than five (5) days after the return or payment due date, give written notice to the person responsible for making the return or paying the taxes, which notice shall state that the same must be filed or paid within fifteen (15) days from the date of the notice.

(b) If the return is not filed or taxes not paid within fifteen (15) days of the date of notice, the Director may make an estimate, based upon such information as may be available, of the amount of taxes due for the period or periods for which the taxpayer is delinquent and shall add a penalty in an amount equal to the greater of \$15 or ten percent (10%) of the estimated tax, together with simple interest on the estimated tax at the rate of one and one-half percent (1½%) per month from the due date thereof. The Director may assess this tax, penalty, and interest against the delinquent taxpayer by giving the taxpayer written notice and demand for payment, which shall require the taxpayer, within ten (10) days of the date of the notice, to either pay the assessed amount or petition for correction. Any such petition for correction



shall be in writing, and any facts or figures in support thereof shall be submitted upon the oath of the taxpayer. The Director shall consider a petition for correction and make a final decision as to the proper amount of taxes, penalty, and interest due.

(c) If a taxpayer disputes an estimated-tax decision, the taxpayer shall provide the Director with a written protest, filed within thirty (30) days of the Director's final decision. The protest shall identify the amount of tax disputed, including specific grounds for dispute, and shall request a hearing before the Director. This protest process, and that of any related appeal, shall be in accordance with Section 29-2-106.1, C.R.S.

(Ord. 83-14 §2: Ord. 82-27 §1(part))

### **3.08.200 – Jeopardy assessment.**

(a) Jeopardy Enforcement: If the Director finds that collection of tax will be jeopardized by delay, the Director may, in his or her sole discretion, declare the taxable period immediately terminated, determine the tax owed, and issue notice and demand for payment thereof, which tax will then be due and payable forthwith. The Director may proceed immediately to collect such tax by distraint as provided in Section 3.08.300.

(b) Immediate Enforcement Action: In any other case in which it appears that the revenue is in jeopardy, the Director may immediately issue a demand for payment, making the tax due and payable forthwith. The Director may proceed immediately to collect such tax by distraint as provided in Section 3.08.300.

(c) Security for payment: Collection under either subsection (a) or (b) may be stayed if the taxpayer gives security for payment satisfactory to the Director.

### **3.08.210 - Service charge—returned checks.**

If a physical check in payment of any sales tax is returned unpaid, a processing charge of fifty dollars (\$50.00) will be added to any amount due and owing.

(Ord. 82-27 §1(part))

### **3.08.220 - Investigation of retailer's books.**

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any taxpayer, the Director may hold investigations and hearings concerning any matters covered by this Section, and may examine any relevant books, papers, records, or memoranda of any such person, requiring the attendance of such taxpayer, or any officer or employee of such taxpayer, or of any person having knowledge of such sales, and taking such testimony and proof as may be necessary to properly ascertain any tax liability. The Director shall have power to administer oaths to any person in the course of such investigations or hearings. Production of documents and attendance of witnesses shall be requested by the Director on his or her own motion or on motion of any party; any request for production or attendance shall inform persons that compliance is voluntary but that, if the request is not complied with, the Director may issue a subpoena.

(Ord. 83-28 §1; Ord. 82-27 §1(part))

### **3.08.230 - Subpoena.**

The Director may issue a subpoena to command a person to attend and give testimony or to produce books, accounts, and records.

(a) Any subpoena issued under the terms of this section shall be served as set forth in the Colorado Rules of Civil Procedure, including payment of witness fees. When the witness is subpoenaed at the Town's insistence, such fees shall be paid by the Town. When a witness is subpoenaed at the taxpayer's insistence, the cost of service and witness fee shall be paid by the taxpayer, from whom the Town may first require a deposit to cover those costs and fees.

(b) It shall be unlawful to fail to attend, give testimony, or produce books, accounts, and records as commanded in a duly issued and served subpoena. In addition to the imposition of penalties for violating this section, the municipal court is authorized to issue an order requiring compliance with the subpoena, which order shall be enforceable by contempt proceedings.

(Ord. 83-28 §3: Ord. 82-27 §1(part))

### **3.08.240 - Coordinated audit procedures.**

(a) Any taxpayer licensed in this Town pursuant to Section 3.08.090 and holding a similar sales tax 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 Director, 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 Town's right to recover tax owed by the vendor for the audit period.

(c) Except as provided in subsection (g) of this section, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of any passage-of-time based limitation upon the Town's right to recover taxes owed for the proposed audit period may be audited by this Town 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 Town desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection (c) of this Section, the 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 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 Town, this Town's Director shall facilitate arrangements between this Town and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The 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 Town, this Town's Director shall, once arrangements for the coordinated audit between the Town 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 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) When a taxpayer refuses to promptly sign a waiver of any ordinance that could limit, based upon passage of time, the Town's right to recover for a portion of the audit period; or,

(3) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subsection (b) of this section.

(Ord. 91-7 §5)

**3.08.250 - Sales tax information confidential.**

(a) Except in accordance with a judicial order, or as otherwise herein provided, the Town shall not divulge any information gained from any return filed or as a result of any investigation or hearing held pursuant to the provisions of this Section.

(b) Nothing contained in this subsection shall be construed to prohibit:

(1) The delivery to a person, or to his or her duly authorized representative, of a copy of any return filed in connection with his or her tax;

(2) The publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof;

(3) The inspection of tax returns and related information by the Town Attorney, other legal representatives, the Director, other employees of the Town with a need to know such information in connection with the performance of their duties, or law enforcement personnel of the Town;

(4) Disclosure of information to an auditor or any other outside agent hired by the Town for the purpose of auditing or establishing tax liabilities;

(5) Provision of information from filed returns and reports to a third party solely for use in performing Town-funded economic and fiscal analyses pursuant to a written

agreement approved by the Town council to maintain strict confidentiality in accordance with this chapter. All results and published information derived from the information provided shall aggregate data from filed returns in a manner that does not reveal business-specific information. Any third-party receiving information from returns under this paragraph must maintain the information separately from other project information, and must, upon completion of such analysis, either return all copies of the information to the Director or destroy them.

(c) Reports and returns shall be preserved for three years, and thereafter until the Director, with the approval of the Town Manager, shall order them destroyed.

(Ord. 82-27 §1(part))

### **3.08.260 – Violations and judicial enforcement - penalty**

(a) It shall be a violation of this Chapter for any purchaser not to pay the sales tax levied by this Chapter, or to fail to pay the tax levied upon a sale where an exemption status is disputed.

(b) It shall be a violation of this Chapter for any retailer not to collect and remit the sales tax levied by this Chapter.

(c) Any person violating any of the provisions of this Chapter shall be punished in accordance with Chapter 1.08 of the Avon Municipal Code.

(d) Nothing contained in this Section shall limit the Town's authority to enforce the provisions of this Chapter by any other lawful means.

### **3.08.270 – Retailer's liability for payment; taxes held in trust**

(a) All sums of money paid by a purchaser to a retailer as taxes imposed by this Chapter shall be and remain public money, belonging to the Town of Avon, which funds shall be held in trust for the sole use and benefit of the Town until paid.

(b) Every retailer engaged in business in the Town and selling at retail shall be liable and responsible for the payment of an amount equivalent to the amount of tax imposed by this Chapter.

(c) Any period of limitation provided in this Chapter shall not apply to collections of public money in the possession of a retailer, and such moneys are collectable at any time after their due date upon demand by the Director. Bankruptcy will not excuse unremitted taxes collected or held in trust.

### **3.08.280- Marketplace Sales**

(a)(1) A marketplace facilitator engaged in business in the Town 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 Town, 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 the marketplace facilitator.

(2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer or vendor as defined in Section 3.08.010. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town 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 of 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, 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:

a. 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

b. From 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.

(5) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(b) Auditing. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace facilitator. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

### **3.08.290 - Unpaid tax a prior lien.**

(a) Any sales tax imposed by this Chapter, together with the interest and penalties herein provided and the cost of collection, shall be a first and prior lien upon:

(1) The goods, stock-in-trade, and business fixtures of or used by any taxpayer under lease, title-retaining contract, or other contractual arrangement; and

(2) The real and personal property owned or leased by any such taxpayer, including personal property affixed to real property, and shall take precedence on all such property over other claims and mortgages.

(b) This lien shall arise the day the tax becomes due and payable and shall be extinguished by operation of law when the tax is paid in full, including any interest, penalty, and collection costs.

(c) Whenever the business or property of any taxpayer subject to this Chapter shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property or other taxes, all taxes, penalties, and interest imposed by this Chapter and for which said person is any way liable under the terms of this Chapter shall be a prior and preferred lien against all the property of said taxpayer, and no sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this Chapter under process or order of any court without first ascertaining from the Director the amount of any taxes due

and payable under this Chapter. If such taxes are due, owing, or unpaid, it shall be the duty of such officer to first pay that amount out of the proceeds of said sale before making payment to judgment creditors or for other claims of whatsoever nature.

(d) At any time that a tax has accrued but is unpaid, the Director may issue a notice of tax lien, setting forth: the name of the taxpayer; the amount of the tax, penalties, and interest; the date of the accrual thereof; and that the Town claims a first and prior lien on the real and tangible personal property of the taxpayer. Said notice may be filed in the office of the Clerk and Recorder of any Colorado county in which the taxpayer owns real or tangible personal property. Issuance of such notice and filing thereof shall be at the discretion of the Director and shall not affect the priority or validity of the lien provided by this Chapter, which lien arises by operation of law when the tax accrues and is payable.

(e) Any lien for taxes as shown on the records of a County Clerk and Recorder as herein provided, upon payment of all taxes, penalties, and interest covered thereby, shall be released by the Director in the same manner as mortgages and judgments are released.

(Ord. 82-27 §1(part))

### **3.08.300 – Collection by distraint.**

(a) Distraint Warrant: The Director may issue a distraint warrant under his or her own hand directed to any agent of the Town, including but not limited to a Town employee, outside contractor, police officer, county sheriff, or any other person identified by the Town to act as agent for the purposes listed here, commanding him or her to distraint, seize, and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any provision of this Chapter, for the payment of the tax due, together with penalties and interest accrued thereon plus collection costs:

- (1) When a deficiency in tax is not paid within thirty (30) days from the date of a notice of deficiency and demand for payment when no written protest is made pursuant to Section 3.08.150(d) or Section 3.08.190(c);
- (2) When any other amount of tax, penalty, or interest is not paid within thirty (30) days from the date of a notice of assessment and demand for payment thereof;
- (3) When any deficiency in tax is not paid within thirty (30) days after the taxpayer has exhausted local remedies, as defined by § 29-2-106.1(2)(c), C.R.S., without the taxpayer seeking further appeal; or
- (4) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 3.08.200.

(b)Distraint Seizure:

- (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 or her usual place of abode with some member of his or her family over the age of eighteen (18) years, or at his or her usual place of business with his or her 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. If said notice cannot be served on the taxpayer within thirty (30) miles of the Town, then it shall be mailed to the taxpayer's last known address, return receipt requested.

(2) The agent 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 within the county wherein distraint is made, or, in lieu thereof and at the sole discretion of the Director, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made and copies thereof to be posted in at least two (2) other public places within said county.

(3) 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 the agent or sheriff if he or she deems it advisable, but not for a time to exceed in all 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 same 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 the same to be purchased by him or her for the Town. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the Director.

(4) In any case of distraint for the payment of taxes, the real property, 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 and Evidence of Purchase: In all cases of sale under this Section, 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 his or her proceedings in making the sale and shall transfer to the purchaser all right, title, and interest of such delinquent taxpayer 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 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; 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 the same, as against any other person. Any surplus remaining above the taxes, penalties, interest, all costs and all 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 Director shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs

and expenses incurred by the Town in enforcing collection by distraint, including but not limited to attorney's fees and all personnel costs of the Town.

**3.08.310 – Director’s remedies**

(a) So long as a final assessment duly made remains unpaid in full, the Director may pursue any or all the following enforcement actions against the defaulting taxpayer:

- (1) Revoke the taxpayer’s business and/or sales tax license.
- (2) Issue a summons to the taxpayer to appear in Municipal Court on charges of violating this Chapter or Code.
- (3) Issue a Distraint Warrant pursuant to this Chapter.
- (4) File a complaint in County or District Court to collect amounts owed.
- (5) Engage the services of a debt collector.
- (6) Any other enforcement action allowed by law.

(b) Regardless of the collection or enforcement procedures pursued by the Director, all unpaid taxes, penalties, and interest shall be secured by a lien arising by operation of law as provided by this Chapter.

**3.08.320 - Sale of stock or quitting business.**

(a) Any retailer who sells out his or her business or stock of goods or who quits business shall be required to file a tax return as provided in this Chapter within fifteen (15) days after the date of completion of said sale or the quitting of business, and the purchaser thereof, if any, shall be required to withhold sufficient of the purchase money to cover the amount of tax due and unpaid until such time as the retailer shall produce a receipt from the Director showing that all such taxes have been paid and that no further taxes are due.

(b) If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided, and the tax shall be due and unpaid after the fifteen-day period allowed, such purchaser shall be personally liable for the payment of the taxes unpaid by the former owner, and the liens created by Section 3.08.290 shall immediately attach to the personal property so purchased; provided, however, that the retailer so selling or quitting business shall not be relieved in any manner of his or her liability for payment of any of said taxes due.

(Ord. 82-27 §1(part))

**3.08.330 – Notices.**

All notices required under this Chapter shall be in writing and, if sent by conventional or electronic mail to the last known address of the intended recipient, shall be deemed sufficient upon that mailing. Any period of time linked to a notice commences with the date listed on the notice, no matter how delivered.

(Ord. 82-27 §1(part))

**3.08.340 - License and tax in addition to all other taxes.**



The license and tax imposed by this Chapter shall be in addition to all other licenses and taxes imposed by law, except as herein otherwise provided.

(Ord. 82-27 §1(part))

**3.08.350 – Administration; promulgation of rules; interpretation.**

(a) Administration of this Chapter’s provisions is vested in the Director, who may, with the approval of the Town Manager, prescribe forms and reasonable rules and regulations for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed hereunder, and for the proper administration and enforcement of those taxes. In the event the Director wishes to create a rule or regulation with the binding force of law, he may do so by complying with the following:

- (1) Submit the proposed rule or regulation to the Town Attorney for legal review. No rule or regulation shall take effect without the approval of the Town Attorney.
- (2) Notify the Town Council of the proposed rule or regulation by a letter addressed to the Mayor, which the Town Clerk shall read or mention, at the Mayor’s discretion, at the next regularly scheduled Council meeting following the Mayor’s receipt of the letter. The Director shall include in that letter the following:
  - a. The purpose of the rule or regulation;
  - b. The cost of enforcing the rule or regulation and the anticipated benefits or revenue to be derived therefrom; and
  - c. A general description of the industry or enterprises that will be affected, directly or indirectly, by the rule or regulation if different from the general tax-paying community.

No rule or regulation shall take effect without the notice described herein being given to the Mayor. No Town Council action is required.

(3) Publish the proposed rule or regulation on the Town’s website to be available for review by the public. The rule or regulation shall become effective sixty (60) days after posting on the Town’s website, unless otherwise stated in the rule or regulation. It shall then be unlawful to violate a rule or regulation adopted by the Director pursuant to this process.

(4) Once fully adopted in the manner set out here, the Director shall file three (3) copies of the rule or regulation with the Town Clerk and one (1) copy each with the Town Attorney and with the executive director of the department of revenue of the State of Colorado; such filings shall constitute evidence for the presumption that the rule or regulation was duly adopted and promulgated in compliance with the foregoing procedures.

(b) The Director shall interpret the Code, rules, and regulations for the purpose of administering this Sales Tax Code. The Director’s interpretation shall be presumed correct and given deference in any dispute unless that interpretation is inconsistent with the legislative intent manifested in the text of the Code, rules, or regulations.

(Ord. 82-27 §1(part))

**3.08.360 - Sales tax—credit for sales or use taxes previously paid to another municipality.**

The Town's sales tax shall not apply to the sale of tangible property at retail or the furnishing of services to the extent the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of that provided for in Section 3.08.030. A credit shall be granted against the Town's lawfully imposed local sales tax in the amount of tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the Town's sales tax imposed pursuant to Section 3.08.030.

(Ord. 86-2 §2)

**3.08.370 – Inter-city 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 taxes to the Town.

- (1) As used in this Section, *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (2) When it is determined by the Director that sales tax owed to the Town has been reported and paid to another municipality, the Town 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.
- (3) The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town, 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 Town. 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 Town 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 Town shall not be unreasonably withheld.
- (4) Within ninety (90) days after receipt of a claim for recovery, the Town shall verify to its satisfaction whether 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 Town 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.
- (5) The Town 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.

(6) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

(Ord. 91-7 §6)

**3.08.380 - Sales tax—collection—limitation of actions.**

(a) No sales tax, or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, distraint warrant issued, suit for collection instituted, nor any other action to collect the same be commenced more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one (1) year after the filing of notice thereof. This period of limitation shall not run for the audit period if written notice is given to the taxpayer prior to expiration of the limitation period that the taxpayer's records will be audited. "Audit period" is the thirty-six (36) month reporting period just preceding an audit notice date.

(b) If no return is filed or if a false or fraudulent return is filed with intent to evade tax then any tax owed plus penalty and interest may be assessed for any period of time without limitation, and proceedings for the collection of such taxes may be brought at any time.

(Ord. 86-2 §3)

**3.08.390 - Sales tax—standard reporting form.**

The Town shall use the standard municipal sales tax reporting form and any subsequent revisions thereto adopted by the Executive Director of the Department of Revenue by the first full month commencing one hundred twenty (120) days after the effective date of the regulation adopting or revising such standard form, or in the discretion of the Director, commencing with any prior full month subsequent to the effective date of the regulation.

(Ord. 86-2 §11)

**3.08.400 - Sales tax—collection—map of municipal boundaries.**

The Director shall make available to any requesting retailer a map showing the boundaries of the Town. The requesting retailer may rely on such map and any update thereof made available to such retailer in determining whether to collect a sales tax. No penalty shall be imposed nor deficiency action maintained against such a retailer who in good faith complies with the most recent map available.

(Ord. 86-2 §12)

**3.08.410 - Notice of amendment to sales and use tax ordinance.**

(a) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Director shall file with the Colorado Municipal League prior to the effective date of the ordinance codified in this Section a copy of the

Town sales and use tax ordinance reflecting all provisions in effect on the effective date of the ordinance codified in 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 Director 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 Town.

(c) Failure of the Town to file such ordinance or ordinance amendment pursuant to this Section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

(Ord. 91-7 §11)

**3.08.420 - Participation of Finance Director in simplification meetings.**

The Director shall cooperate with 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. The committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

(Ord. 91-7 §12)