

3.04 - Sales and Use Tax

Chapter 3.04 - SALES AND USE TAX

Section 1 - General Provisions

- 3.04.010 Title.
- 3.04.020 Purpose and interpretation.
- 3.04.030 Definitions.
- 3.04.040 Violations and judicial enforcement.
- 3.04.050 Liability for payment; Taxes held in trust.
- 3.04.060 Sales and use tax constitutes lien.
- 3.04.070 through 3.04.190 Reserved.

Section 2 - Imposition of Sales Tax

- 3.04.200 Imposition and rate of sales tax.
- 3.04.210 Sales tax – Taxable property and services.
- 3.04.220 Tax on credit sales.
- 3.04.230 Sales – Where consummated.
- 3.04.240 Credit for tax previously paid to another municipality.
- 3.04.250 Tax as a separate and distinct item.
- 3.04.260 Sales tax – Exempt property and services.
- 3.04.270 through 3.04.290 Reserved.

Section 3 - Imposition of Use Tax Other Than on Motor Vehicles

- 3.04.300 Imposition and rate of use tax.
- 3.04.310 Collection of use taxes other than on construction and building materials and motor vehicles.
- 3.04.320 Collection of construction and building materials use tax.
- 3.04.330 Unpaid use tax on construction and building materials shall constitute a lien.
- 3.04.340 Credit for lawfully imposed tax paid to others.
- 3.04.350 Refunds, penalties and interest, recovery and enforcement of obligations.
- 3.04.360 Exemptions to use tax.
- 3.04.370 through 3.04.390 Reserved.

Section 4 - Imposition of Sales and Use Tax on Motor and Other Vehicles

- 3.04.400 Imposition and rate of sales and use tax on motor vehicles.
- 3.04.410 Collection of the sales or use tax on motor vehicles.
- 3.04.420 Exemptions on the sales and use tax on motor vehicles.
- 3.04.430 through 3.04.490 Reserved.

Sections 5 and 6 - Obligations and Responsibilities

- 3.04.500 Licensing obligations.
- 3.04.510 Obligation to obtain special sales event licenses and remit taxes.
- 3.04.520 Obligation to retain records for audits.
- 3.04.530 Obligation to file return and remit tax due; filing due date.
- 3.04.540 Contents, consolidation and reporting periods for tax returns.
- 3.04.550 Vendor allowance.
- 3.04.560 Street locator guide.
- 3.04.570 Taxpayer's obligation to provide information upon request.
- 3.04.580 Obligation to remit excess collections and disputed amounts.
- 3.04.590 Burden of proving exemption.
- 3.04.600 Obligation to update address with City; Notice by mail.
- 3.04.610 Obligations on sale or purchase of business or property; lien.
- 3.04.620 Obligation on settlement and distribution of assets.
- 3.04.630 through 3.04.690 Reserved.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

Section 7 - Refunds

- 3.04.700 Burden of proof for refunds.
- 3.04.710 Refunds.
- 3.04.720 Statute of limitations on claims for refund.
- 3.04.730 Refunds not assignable.
- 3.04.740 Interest on overpayments and refunds.
- 3.04.750 False or fraudulent refund claims.
- 3.04.760 through 3.04.790 Reserved.

Sections 8 and 9 - Collection and Enforcement

- 3.04.800 Mathematical error on tax returns.
- 3.04.810 Limitations period.
- 3.04.820 Failure to file return or pay tax due and penalty – estimate.
- 3.04.830 Interest on late filing.
- 3.04.840 Penalty interest.
- 3.04.850 Audit.
- 3.04.860 Coordinated audit.
- 3.04.870 Assessment; penalties and interest.
- 3.04.880 Jeopardy assessment.
- 3.04.890 Hearings.
- 3.04.900 Appeals.
- 3.04.910 Remedies in event of nonpayment.
- 3.04.920 Lien; Certificate of discharge.
- 3.04.930 Collection by distraint.
- 3.04.940 Civil action for recovery of unpaid tax.
- 3.04.950 Compromise.
- 3.04.960 through 3.04.990 Reserved.

Section 10 - Administration

- 3.04.1000 Duties and powers of the City Manager and Treasurer.
- 3.04.1010 Treasurer to examine returns.
- 3.04.1020 Preservation, production and confidentiality of tax reports, returns and license applications.
- 3.04.1030 Interjurisdictional claims for recovery.
- 3.04.1040 Joint sales and use tax collection, administration and enforcement.
- 3.04.1050 through 3.04.1990 Reserved.

SECTION 1

GENERAL PROVISIONS

3.04.010. Title. The provisions of this Chapter of the City of Evans Municipal Code shall be known and cited as the Evans Sales and Use Tax and Licensing Code. (Ord. 500-10)

3.04.020. Purpose and interpretation.

(a) The provisions of this Chapter shall apply to the imposition, administration, enforcement, and collection of sales and use taxes by the City.

(b) The provisions of this Chapter shall be construed to effect uniformity of imposition, administration, enforcement, and collection of taxes, and to establish uniform procedures, but shall not be construed to extend or increase the application, rate, or amount of any tax levied or imposed herein; provided, however, that the imposition of a penalty, interest, or both penalty and interest shall be lawful and shall not be construed as an extension or increase of the application, rate or amount of tax. The provisions of this Chapter shall not be interpreted as constituting any tax policy change directly causing a net tax revenue gain or decrease from sales and use tax imposed or authorized to be imposed by the City as of 11:59 p.m. on December 31, 2010.

(c) Whenever in this Chapter reference is made to any provision of the Colorado Revised Statutes ("C.R.S.") that reference shall mean those provisions and all regulations promulgated thereunder, in effect as of 11:59 p.m. on December 31, 2010. Notwithstanding anything to the contrary herein, changes in state law and/or regulations or definitions effective on or after 12:00 a.m. on January 1, 2011, may be added to this Chapter only by subsequent

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

amendment to this Chapter by ordinance.

(d) The purpose of this Chapter is to provide the power necessary to exercise effectively the right to raise revenue that is essential to home rule and self-government. Regardless of any similarities or any reference to state statute, the provisions contained herein are matters of solely local concern.

(e) It is the intent of the City in enacting this ordinance to codify the existing body of law, including applicable state statutes and regulations and City ordinances, as such law applied to the imposition, administration, and collection of the tax hereunder as in effect at 11:59 p.m. on December 31, 2010 and all questions of interpretation shall take into account such law as in effect as of that time. (Ord. 500-10)

3.04.030. Definitions.

(a) For the purpose of this Chapter, the definitions of words, terms or phrases contained in this Chapter and not otherwise defined herein shall be as defined in Title 39, Chapter 26, C.R.S., any other statutory provisions referenced thereunder or herein, and any regulations promulgated thereunder, in effect as of 11:59 p.m. on December 31, 2010, and said definitions are incorporated herein by this reference.

(b) Capitalized words, terms and phrases used in this Chapter, unless the context clearly indicates otherwise, shall be defined as follows:

(1) Accommodations means the furnishing of space in any campgrounds, auto camp, trailer court or park, under concession, permit, right to access, license to use, or any other agreement by or through which any such space may be used or occupied. Accommodations are exempt from taxation if rented for at least thirty (30) consecutive days during the calendar year or preceding year.

(2) Attachments mean any equipment or Machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(3) Auction Sale means any sale conducted or transacted at a permanent place of Business operated by an auctioneer or a sale conducted and transacted at any location where Tangible Personal Property is sold by an auctioneer when the auctioneer is acting either as the agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in this section, except when acting as an agent for a duly licensed Retailer or Vendor or when selling only Tangible Personal Property that is exempt under the provisions of this Chapter, is a Retailer or Vendor as defined in this section and the sale made by the auctioneer is a Retail Sale as defined in this section, and the Business conducted by said auctioneer in accomplishing such sale is the transaction of a Business as defined in this section.

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

(5) Charitable Organization means any entity which:

(A) Has been certified as a not-for-profit organization under 501(c) (3) of the "United States Internal Revenue Code of 1986", as amended; and

(B) Is an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under section 501(c)(19) of the "Internal Revenue Code of 1986", as amended, for the purpose of sponsoring a special event, meeting, or other function in the City so long as such event, meeting, or function is not part of such organization's regular activities in the City.

(6) City Manager means the City Manager of the City appointed by the City Council or such person appointed to act as City Manager.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(7) Claim for Recovery means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(8) Closely Held Subsidiary Corporation means a corporation in which the parent corporation 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 of the total number of shares of all other classes of stock.

(9) Code means the Municipal Code of the City of Evans, Colorado, as amended.

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

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

(12) Compromise means a settlement of differences by mutual concessions; an agreement reached by adjustment of conflicting or opposing claims, principles, etc., by reciprocal modification of demands.

(13) Contractor means any individual, partnership, firm, association, corporation, trust, estate or joint venture that performs construction work on real property for another party under the terms of an agreement. An individual working for a salary or wages is not considered a Contractor. "Contractor" includes building Contractors, road Contractors, grading and excavating Contractors, electrical Contractors, plumbing and heating Contractors, and also includes any other Person engaged, under a contractual arrangement, in the construction, reconstruction, or repair of any building, bridge or structure. For the purpose of this definition, "subcontractor" has the same meaning as "Contractor."

(14) Cooperative Direct Mail Advertising means advertising for one (1) or more Businesses which is in the form of discount coupons, advertising leaflets, or other printed advertising which are delivered by mail in a single package or bundle to potential customers of such Businesses participating in such advertising.

(15) Dairy Equipment means any item that is used at a farm dairy in connection with the production of raw milk and not at a commercial dairy in connection with the production of pasteurized, separated milk products for Retail Sale, including, without limitation, milking claws, shells, inflators, pulsators, meters, cow identification systems, transponders, automatic takeoffs, piping, receiver jars, pumps, filter assemblies, milk containment tanks, cooling compressors, wash vats, clean in place assemblies, wash lines, wash control units, pulsator controls, milking system controls, programmable logical control systems, vacuum pumps, vacuum distribution tanks, backflush and related valves, rubber and similar hoses, rubber and similar gaskets, and any other similar or related item used in any farm dairy facility or farm dairy operation or in the production of raw milk, regardless of whether or not the item has become a fixture. To the extent the farm dairy is also involved in the production of pasteurized, separated milk products for Retail Sale, only the equipment used exclusively in the production of raw milk constitutes Dairy Equipment for purposes of this section.

(16) Direct Mail Advertising Materials means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.

(17) Distraint Warrant means a warrant served by an authorized officer of the Police Department, the sheriff or authorized agent, indicating the amount due and date to be paid by and requiring that the delinquent taxpayer not remove or destroy any property in the Business. If taxes are still not paid, property could be seized, advertised and sold for the amount of taxes and expenses due.

(18) Drug means

(A) Substances recognized as Drugs in the official United States of America pharmacopoeia, national formulary, or the official homeopathic pharmacopoeia of the United States, or any supplement to any of them;

(i) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

(ii) Substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and

(iii) Substances intended for use as a component of any substance specified in subparagraph (i), (ii), or (iii) of this

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

paragraph.

(B) Drug does not include medical marijuana, devices or their components, parts, or accessories.

(19) Engaged in Business means performing or providing services, or selling, leasing, renting, delivering, installing or any activity in connection with the selling, leasing, renting, delivering, or installing in the City of Tangible Personal Property by a Retail Sale as defined in this Section, for use, storage, distribution, or consumption within this City. This term includes, but shall not be limited to, the following acts or methods of transacting Business:

(A) Maintaining within the City, directly or indirectly or by a subsidiary, an office, building, structure, store, distributing house, salesroom or house, warehouse, mobile vendor, or other place of Business;

(B) Maintaining within the City an office for employees, agents, or commissioned sales Persons to solicit Business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;

(C) Owning, leasing, renting, or otherwise exercising control over real or personal property within the City;

(D) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of Business from Persons residing in this City and by reason thereof receiving orders from, or selling or leasing Tangible Personal Property to, such Persons residing in this City for use, consumption, distribution, and Storage for use or consumption in this City; and

(E) Making more than one (1) delivery into the City within a twelve (12) month period.

(20) Fabricating means an operation which changes the form or state of Tangible Personal Property.

(21) Factory-Built Housing means a Manufactured Home constructed to the building codes adopted by the State Housing Board, created in C.R.S. section 24-32-706, and designed to be installed on a permanent foundation, except for homes constructed to any standard promulgated by the Secretary of the United States Department of Housing and Urban Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. section 5401 et seq. and any home designated as a Mobile Home. This definition includes modular or sectional homes.

(22) Farm Equipment means any farm tractor, as defined in C.R.S. section 42-1-102 (33), any implement of husbandry, as defined in section C.R.S. section 42-1-102 (44), and irrigation equipment having a per unit Purchase Price of at least one thousand dollars (\$1,000.00). "Farm Equipment" also includes, regardless of Purchase Price, Attachments and baling wire, binders twine, and surface wrap used primarily and directly in any Farm Operation. Farm Equipment also includes, regardless of Purchase Price, parts that are used in the repair or maintenance of the Farm Equipment described in this paragraph, all shipping pallets, crates, or aids paid for by a Farm Operation, and aircraft designed or adapted to undertake agricultural applications. Farm Equipment also includes, regardless of Purchase Price, Dairy Equipment. Except for shipping pallets, crates, or aids used in the transfer or shipping of agricultural products, Farm Equipment does not include:

(A) Vehicles subject to the registration requirements of C.R.S. section 42-3-103, regardless of the purpose for which such vehicles are used;

(B) Machinery, equipment, materials, and supplies used in a manner that is incidental to a Farm Operation;

(C) Maintenance and janitorial equipment and supplies; and

(D) Tangible Personal Property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

(23) Farm Operation means the production of any of the following products for profit, including, but not limited to, a Business that hires out to produce or harvest such products:

(A) Agricultural, viticultural, fruit, and vegetable products;

(B) Livestock;

(C) Milk;

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(D) Honey; and

(E) Poultry and eggs.

(24) Food means food for domestic home consumption as defined in 7 U.S.C. sec. 2012(g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. sec. 2012(h), as amended; and includes without limitation carbonated water marketed in containers, chewing gum, seeds and plants to grow foods, prepared salads and salad bars, packaged and unpacked cold sandwiches, deli trays, and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin collecting food and snack devices on behalf of a Vendor.

(25) Gross Sales means the total amount received in money, credits, property or other consideration valued in money for all sales, leases, or rentals of Tangible Personal Property or services within the City.

(26) Gross Taxable Sales means the total amount received in money, credits, or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within this City, and embraced within the provisions of this Chapter. The Taxpayer may take credit in this report of Gross Sales for an amount equal to the sale price of property returned by the Purchaser when the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross taxable sales. On all sales at retail, valued in money, when such sales are made under conditional sales contract, or under other forms of sale where the payment of the principal sum thereunder is extended over a period longer than sixty (60) days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this Chapter as has actually been received in cash by the Taxpayer during the period for which the tax imposed by this Chapter is due and payable. Taxes paid on gross taxable sales represented by accounts found to be worthless and actually charged off for income tax purposes, as defined by the "United States Internal Revenue Code of 1986", as amended, may be credited upon a subsequent payment of the tax provided in this Chapter, but if any such accounts are thereafter collected by the Taxpayer, a tax shall be paid upon the amounts so collected.

(27) Internet means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled, switched data networks.

(28) 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.

(29) Jeopardy Audit or Jeopardy Assessment means an audit or assessment completed or issued in an expedited manner in order to assure the collection of sales or use taxes due under this Chapter.

(30) License or "City License" means a City business license required under and issued pursuant to this Chapter, which license also constitutes a sales tax license for Persons who are Vendors.

(31) Livestock means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. Livestock shall include "alternative livestock" as defined in State law, but shall not include under C.R.S. section 35-41.5-102, a "pet animal" as defined under C.R.S. section 35-80-102 (10).

(32) Long-Term Power Purchase Agreement means an agreement executed between one (1) or more independent power producers and a provider of retail electric service for a term of no less than ten (10) years, pursuant to which the independent power producer or producers agree to sell all of the production offered for sale from a particular power generation facility for a Specified Price over a specified term.

(33) Manufactured Home means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by Persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

vehicle.

(34) Medical Marijuana means marijuana that is grown and sold pursuant to the provisions of Article 43.3 of Title 12, C.R.S. and for a purpose authorized by Section 14 of Article XXVIII of the Colorado Constitution and includes medical marijuana infused products as such term is defined in the Colorado Medical Marijuana Code, CRS Section 12-43.3-104, as amended from time to time.

(35) Mobile Home means a Manufactured Home built prior to the adoption of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. sec. 5401 et seq.

(36) Motor Vehicle means a vehicle required to be registered under C.R.S. Title 42.

(37) Newspaper means every newspaper printed and published daily, or daily except Sundays and legal holidays, or which shall be printed and published on each of any five (5) days in every week excepting legal holidays and including or excluding Sundays, shall be considered and held to be a daily newspaper; every newspaper printed and published at regular intervals three (3) times each week shall be considered and held to be a tri-weekly newspaper; every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semi-weekly newspaper; and every newspaper printed and published at regular intervals once a week shall be considered and held to be a weekly newspaper.

(38) Occasional Sales means Retail Sales of Tangible Personal Property by a Charitable Organization, including concessions, for fund-raising purposes if:

(A) The sale of Tangible Personal Property or concessions by a Charitable Organization which takes place no more than twelve (12) days, whether consecutive or not, during any one (1) calendar year;

(B) The funds raised by the Charitable Organization through these sales are retained by the organization to be used in the course of the organization's charitable service, and

(C) The funds raised by the Charitable Organization through these sales do not exceed twenty-five thousand dollars (\$25,000.00) during any one (1) calendar year.

(39) Prescription Order means:

(A) A Prescription Order is any order, other than a chart order, authorizing the dispensing of a single Drug or device that is written, mechanically produced, computer generated and signed by a Practitioner, transmitted electronically or by facsimile, or produced by other means of communication by a Practitioner to a licensed pharmacy or pharmacist and that includes the name or identification of the patient, the date, the symptom or purpose for which the Drug is being prescribed, if included by the Practitioner at the patient's authorization, and sufficient information for compounding, dispensing, and labeling; or

(B) A chart order, which is an order for inpatient Drugs or medications that are to be dispensed by a pharmacist, or by a pharmacy intern under the direct supervision of a pharmacist, and administered by an authorized person only during the patient's stay in a hospital or long-term care facility. The chart order shall contain the name of the patient and the medicine ordered and such directions as the Practitioner may prescribe concerning strength, dosage, frequency, and route of administration.

(40) Person means any individual, firm, limited liability company, partnership, joint venture, corporation, estate, or trust or any group or combination acting as a unit, and the plural as well as the singular number.

(41) Practitioner means a person authorized by law to prescribe any Drug or device, acting within the scope of such authority.

(42) Precious Metal Bullion means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

(43) Pre-Press Preparation Printing Materials means those tangible products converted to use for a specific print job that are subsequently saved but can only be reused for that same print client on rerun. Title to such materials must pass to an independent customer with the sale of the printed materials, and they must be reusable for their original purpose or a similar purpose after the press run. Examples include, but are not limited to, photos, color

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

keys, dies, engravings, light sensitive film or paper, masking sheets of any material, plates, rotogravure cylinders, and proofing samples of any material. No disposable materials or materials consumed to a significant degree are pre-press preparation printing materials for the purposes of this Chapter. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers, and cleaners.

(44) Prescription means any Order in writing for a Drug, as defined herein, dated and signed by a Practitioner, or given orally by a Practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of a person for whom a Drug is ordered and directions, if any, to be placed on the label.

(45) Price or Purchase Price means

(A) The price to the Purchaser, exclusive of any direct tax imposed by the federal or state 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 time and place of the exchange, if:

- (i) Such exchanged property is to be sold thereafter in the usual course of the Retailer's Business; or
- (ii) 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.

(B) In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a Purchaser to enter into or continue a contract for telecommunication services that are subject to sales tax, "Purchase Price" means and shall be limited to the monetary amount paid by the Purchaser and shall not reflect any sales commission or other compensation received by the Retailer as a result of the Purchaser entering into or continuing a contract for such telecommunication services. Nothing in this paragraph (B) shall be construed to define "Purchase Price" as it applies to the amount a Retailer collects from a Purchaser who defaults or terminates a contract for telecommunication services.

(C) Price or Purchase Price also includes:

- (i) The amount of money received or due in cash and credits;
- (ii) Property at fair market value taken in exchange but not for resale in the usual course of the Retailer's Business;
- (iii) Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the Retailer for part of the purchase price and other media of exchange;
- (iv) The total price charged on credit sales including finance charges which are not Separately Stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and Separately Stated is not part of the purchase price;
- (v) Installation, delivery and wheeling-in charges included in the purchase price and not Separately Stated;
- (vi) Transportation Charges to effect delivery of Tangible Personal Property to the Purchaser, if not both Separable from the sales transaction and Separately Stated on the invoice;
- (vii) Indirect federal manufacturer's excise taxes, such as taxes on automobiles, tires and floor stock; and
- (viii) 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.

(46) Prosthetic Device means an artificial part which aids or replaces a bodily function and which is designed, manufactured or adjusted to fit a particular individual.

(47) Purchaser means a Person that purchases, uses, stores or consumes property or services taxable under this Chapter.

(48) Retailer means a Person doing a Retail Sales Business, known to the trade and public as such, and selling to the user or Purchaser, not for resale, and selling Tangible Personal Property and/or services.

(49) Retail Sale means all Sales made within the City except Wholesale Sales.

(50) Sale or Sale and Purchase includes installment and credit sales and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale; to

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

include without limitation Auction Sales; and the sale or furnishing of electrical energy, gas, steam, telephone, or telegraph services taxable under the terms of this Chapter. Neither term includes:

(A) A division or partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;

(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 of 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;

(D) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

(E) The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(F) The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(G) A transfer of a limited liability company or partnership interest;

(H) The transfer in a reorganization qualifying under section 368 (a) (1) of the "United States Internal Revenue Code of 1986", as amended;

(I) The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;

(J) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder; or

(K) The transfer of assets between parent and Closely Held Subsidiary Corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations 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 corporation at the time it acquired such assets, except to the extent provided by section 3.04.210(h).

(51) School means an educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty students, and charging a tuition fee.

(52) Separable means Transportation Charges that are performed after the taxable property or service is offered for sale and the seller allows the Purchaser the option either to use the seller's transportation services or use alternative transportation services (including, but not limited to, the purchaser picking up the property at the seller's location). The fact that transportation charges are Separately Stated does not, in and of itself, mean the charges are a separable charge.

(53) Separately Stated means set forth separately in a written sales contract, retailer's invoice, or other written document issued in connection with the sale.

(54) Special Sales Event means any sales event, which includes more than three (3) Vendors, taking place at a single location, for a limited period of time not to exceed seven (7) consecutive days.

(55) Special Sales Event License means the license issued in accordance with this Chapter for any Special Sales Event.

(56) Standardized Software means:

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(A) Computer software, including prewritten upgrades, that is not designed or developed to the specifications of a specific purchaser; or computer software designed and developed to the specifications of a specific purchaser but then sold to another purchaser.

(B) Standardized software includes standardized software that is modified or enhanced even if such modification or enhancement is designed and developed to the specifications of a specific purchaser, unless such standardized software is a de minimis component of such software.

(C) Standardized software shall not include software or information technology services that modify or enhance standardized software if there is a reasonable, separately stated charge, invoice, or other statement of price given to the purchaser for such software or information technology services that modify or enhance the standardized software.

(D) Standardized software includes the combination of two or more standardized software programs or portions thereof.

(E) Standardized software excludes maintenance agreements for the maintenance of standardized software.

(F) Standardized software shall not include software developed for a person's or affiliate's own use. However, if such software is subsequently sold, such software sold shall be considered standardized software.

(G) For purposes of this definition subsection, computer software or software means a set of coded instructions designed to cause a computer or automatic data processing hardware to perform a task.

(57) State means the State of Colorado.

(58) Storage or Storing means any keeping or retention of, or exercise of dominion or control over, Tangible Personal Property in this City.

(59) Tangible Personal Property means corporeal personal property. The term shall not be construed to include Newspapers, preprinted newspaper supplements that become attached to or inserted in and distributed with such Newspapers but shall include direct mail advertising materials that are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising. This term embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in or capable of being processed and exchanged. Tangible personal property includes Standardized software without regard to how such Standardized software is acquired by the Purchaser or downloaded to the Purchaser's computer.

(60) Taxable Service means services subject to tax pursuant to this Chapter.

(61) Taxpayer means any Person obligated to account for and/or remit sales and/ or use taxes collected or to be collected or paid under the terms of this Chapter, including but not limited to Vendors, Retailers and Persons Engaged in Business.

(62) Transportation Charges means carrying, handling, delivery, mileage, freight, postage, shipping, trip charges, stand-by, and other similar charges or fees.

(63) Treasurer means the City Treasurer as provided by Section 4.8 of the Home Rule Charter and who also serves as Treasurer pursuant to Section 2.08.010 of this Code or person appointed to act as City Treasurer.

(64) Vendor means a retailer, merchant, jobber, dealer or any other Person selling articles of Tangible Personal Property or Taxable Services to Purchasers, as defined herein.

(65) Wholesaler means a Person doing a regularly organized wholesale or jobbing Business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

(66) Wholesale Sale means a sale by a Wholesaler to retail merchants, vendors jobbers, dealers, or other Wholesalers for resale and does not include a sale by Wholesalers to users or Purchasers not for resale, and the latter sales shall be deemed Retail Sales and subject to the provisions of this Chapter. This term includes sales of

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

all Pre-Press Preparation Printing Materials which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within this City. (Ord. 500-10)

3.04.040. Violations and judicial enforcement.

(a) It shall be a violation of this Code for any Person subject to the tax levied by this Chapter to fail to obtain and maintain any license required hereunder, to refuse to make any return required to be made by this Chapter, or to make any false or fraudulent return, or any false statements in any return, or to fail or refuse to make payment to the City of any taxes collected or due the City, or in any manner to evade the collection and payment of the tax, or any part thereof, imposed by this Chapter, or to fail or refuse to pay such tax or evade the payment thereof, or to otherwise violate any of the provisions of the Chapter, or to aid or abet another in any attempt to evade the payment of the tax imposed hereunder.

(b) It shall be a violation of this Code for any Purchaser or Taxpayer not to pay the sales or use tax levied by this Code or to fail to pay the tax levied where the status of exemption is disputed.

(c) Pursuant to this Chapter, the City Manager has the authority of a peace officer, as such term is defined under the Colorado Municipal Court Rules, to cause to be issued and served summons into the City's Municipal Court to any Person who may be in violation of this Chapter.

(d) Nothing contained in this section shall limit the City's authority to enforce the provisions of this Chapter by any other lawful means. (Ord. 500-10)

3.04.050. Liability for payment; taxes held in trust.

(a) All sums of money paid by the Purchaser to any Taxpayer, including any Vendor or Person holding or obligated to hold a License under this Chapter, as taxes imposed by this Chapter shall be and remain public money, the property of the City, in the hands of such Person and he shall hold the same in trust for the sole use and benefit of the City, until paid to the City, and for any failure to so pay to the City, such Person shall be punished as provided by law.

(b) Every Taxpayer, including any Vendor or Person holding or obligated to hold a License under this Chapter, shall be liable and responsible for the payment of an amount equivalent to the amount of the tax imposed by this Chapter computed on the total of all Sales made by them of Tangible Personal Property or Taxable Services as specified herein.

(c) Every Person obligated to pay and/or remit use tax under this Chapter shall be liable and responsible for the payment of such tax.

(d) Any statute of limitations provided in this Chapter does not apply to collections of public money in the possession of any Taxpayer, including any Vendor or Person holding or obligated to hold a License under this Chapter, and such moneys are collectable at any time after their due date upon demand of the City Manager or the Treasurer. Bankruptcy will not excuse unremitted taxes collected in trust.

(e) Any Taxpayer, including any Vendor or Person holding or obligated to hold a License under this Chapter, who executes any form or report required by this Chapter to be submitted to the City shall be personally responsible for the payment of any taxes required under this Chapter. (Ord. 500-10)

3.04.060. Sales and use tax constitutes lien.

(a) In addition to the provisions set forth in Sections 3.04.320, any sales or use 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 upon 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.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(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 in any way liable under the terms of this Chapter, shall be a prior and preferred lien against all the property of said Person, and no police officer, 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 Treasurer the amount of any taxes due and payable under this Chapter. If there are any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to judgment creditors or other claims of whatsoever nature.

(d) At any time a tax has accrued but is unpaid, the City Manager or Treasurer may issue a notice of tax lien, setting forth the name of the Taxpayer, or other Person the amount of the tax, penalties and interest, the date of the accrual thereof, and that the City claims a first and prior lien on the real and Tangible Personal Property of such Person. Said notice may be filed in the office of the Clerk and Recorder of any county in the State in which the Person owns real or Tangible Personal Property. Issuance of such notice and filing thereof shall be at the discretion of the City Manager or Treasurer and shall not affect the priority or validity of the lien provided by this Chapter, which arises by operation of law when the tax accrues and is payable.

(e) Any lien for taxes as shown on the records of the County Clerk and Recorder as herein provided, upon payment of all taxes, penalties, and interest covered thereby, shall be released by the City Manager or Treasurer in the same manner as mortgages and judgments are released. (Ord. 500-10)

Sections 3.04.070 to 3.04.190. Reserved.

SECTION 2

IMPOSITION OF SALES TAX

3.04.200. Imposition and rate of sales tax.

(a) There is levied and shall be collected a sales tax under this Chapter at the rate of three and one-half percent (3.5%) on the Purchase Price paid upon the Sale of Tangible Personal Property at retail and the furnishing of Taxable Services, as provided herein.

(b) Every Retailer Engaged in Business in this City and making sales of Tangible Personal Property for the storage, use, or consumption in the City which are not exempt from taxation as provided in this Section shall collect the tax imposed by this Section from the Purchaser and give the Purchaser a receipt therefor, which receipt shall identify the property taxed, the date that such property was sold or ordered, and the amount of tax collected and paid. (Ord. 500-10)

3.04.210. Sales tax – Taxable property and services. The sales tax as set forth in Section 3.04.200 shall be levied upon the following:

(a) Tangible Personal Property: On the Purchase Price paid or charged upon the Sale of Tangible Personal Property at retail, including without limitation, Food.

(b) Exchanged Property: In the case of Retail Sales involving the exchange of property, on the Purchase Price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or Purchase Price, the fair market value of the exchanged property if such exchanged property is to be sold thereafter in the usual course of the Retailer's business; or is a vehicle as provided under the provisions of section 3.04.420(c).

(c) Telephone and telegraph services:

(1) Upon telephone and telegraph services, including two-way paging, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. Mobile telecommunications service shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use is within the City and the service originates and terminates within the City. In accordance with the "Mobile Telecommunications Sourcing Act", 4 U.S.C. sections. 116 to 126, as amended, mobile telecommunications service provided to a customer whose place of primary use is outside the borders of the City is exempt from the tax imposed by this section.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

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

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

(C) Any customer that believes a tax, charge, or fee assessed by the City in the customer's bill for mobile telecommunications services is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, may file a claim in the appropriate district court only after complying with the provisions of this subparagraph (2).

(3) As used in this paragraph (c), unless the context otherwise requires:

(A) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. sections. 116 to 126, as amended.

(B) "Customer" means customer as defined in section 124 (2) of the Act.

(C) "Home service provider" means home service provider as defined in section 124 (5) of the Act.

(D) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the Act.

(E) "Place of primary use" means the place of primary use as defined in section 124 (8) of the Act.

(F) "Taxing jurisdiction" means taxing jurisdiction as defined in section 124 (12) of the Act.

(4) For telephone and telegraph services when nontaxable services are aggregated with and not Separately Stated from Taxable Services, the provider of such services shall collect the tax imposed by this Chapter only on intrastate telephone and telegraph services. The provider of such services shall maintain for thirty-six (36) months documentation of the services provided that are taxable and nontaxable. Such documentation is subject to audit, and the service provider shall be liable for any uncollected tax. A service provider shall notify the Treasurer of the percentages of taxable and nontaxable services in a package of aggregated services within thirty (30) days of use on any invoice. If this is not done, the entire price will be subject to sales tax.

(d) Gas and Electric Service: For gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale, upon steam when consumed or used by the Purchaser and not resold in original form whether furnished or sold by municipal, public, or private corporations or enterprises.

(e) Food and Drink Served: Upon the amount paid for Food or drink served or furnished, in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, coffee shops, carryout shops, and other like places of Business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this paragraph at no charge or at a reduced charge shall only be subject to tax on the amount actually paid. Nothing herein affects the tax due upon the amount paid for Food sold at Retail.

(f) Warranties and Maintenance: On the Purchase Price paid for warranty and maintenance agreements which are mandatory and which are parts of the Purchase Price of the item covered by such agreement. Maintenance and warranty agreements which are optional and are sold to a Purchaser as a separate item are not subject to tax but the Retailer must pay sales tax on the cost of materials used in performing the maintenance or warranty work. Not including items of Tangible Personal Property upon which the sales tax is imposed upon the full Purchase Price, every Retailer or Vendor conducting a Business in which the transaction between the Retailer and the Purchaser consists of the supplying of Tangible Personal Property and services in connection with the maintenance or servicing of same shall be required to pay the taxes levied under this Chapter upon the full contract price, unless prior approval is granted by the Treasurer to use a ratio of the Tangible Personal Property included in the

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

consideration as it bears to the total of the consideration paid under said combination contract or sale which is subject to sales tax.

(g) Computer Software: Standardized software will be subject to sales tax regardless of how acquired, including internet downloads or "load-and-leave" software.

(h) Labor or Service: On the Purchase Price paid or charged for manufacturing, producing, fabricating, and processing Tangible Personal Property which has been made to order or tailor-made for the Purchaser. Manufacturing, producing, fabricating or processing is usually deemed to have occurred when Tangible Personal Property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means. An operation which restores a used or worn item of Tangible Personal Property to its essentially original form and use is not considered manufacturing, producing, fabricating or processing within the meaning of this paragraph. The amount charged the Purchaser for labor or services rendered in installing and applying purchased Tangible Personal Property is not subject to tax; provided that such amount is Separately Stated and such separate statement is not to avoid the tax upon the actual sales price of Tangible Personal Property. Any person making a Sale subject to this paragraph must be licensed and may purchase tax free all chapters of Tangible Personal Property which enter into and become a component part of the chapter sold. Purchases of all other chapters of Tangible Personal Property not becoming an ingredient or component part of the finished product are taxable. In connection with the transactions referred to in section 3.04.030(b)(49)(K), the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, Fabricating, or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subsection, the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the Price charged to the user or Purchaser.

(i) Rooms or Accommodations: On the entire amount charged to any Person for the furnishing of rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a 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, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

3.04.220. Tax on credit sales.

(a) In case of a Sale upon credit, or a contract for sale wherein it is provided that the Price shall be paid in installments and title does not pass until a future date, or a chattel mortgage or a conditional sale, there shall be paid upon each payment, that portion of the total tax which the amount paid bears in relation to the total Purchase Price. Notwithstanding any other provision of this subsection (a), a Retailer doing Business wholly or partly on a credit basis may, at his election, make a return, and remit sales tax on credit sales, on the basis of the aggregate amount of cash received during the month from taxable credit sales. The Retailer shall determine the tax to be remitted on the basis of the aggregate amount of tax which he has collected from his credit customers during the month.

(b) If a Retailer transfers, sells, assigns, or otherwise disposes of an account receivable, he shall be deemed to have received the full balance of the consideration for the original Sale and shall be liable for the remittance of the sales tax on the balance of the total Sale price not previously reported; except that such transfer, Sale, assignment, or other disposition of an account receivable by a Retailer to a Closely Held Subsidiary shall not be deemed to require the Retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on said account.

3.04.230. Sales – Where consummated. For the purpose of this Chapter, all Retail Sales are consummated at the place of Business of the Retailer, unless Tangible Personal Property sold is delivered by the Retailer or his or her agent to a destination outside the limits of the City, or to a common carrier for delivery to a destination outside the limits of the City. If legal title to the Tangible Personal Property sold is transferred to the Purchaser, or his or her agent, prior to delivery to a destination outside the limits of the City, the place of taxation is deemed within the City.

3.04.240. Credit for tax previously paid to another municipality. The City sales tax shall not apply to the sale of Tangible Personal Property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the Purchaser or user by another municipality equal to, or in excess of, the rate imposed under this Chapter. A credit shall be granted against the City's sales tax imposed hereunder with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

Purchaser or user to the previous municipality. The amount of the credit shall not exceed the sales tax imposed by the City under this Chapter. (Ord. 500-10)

3.04.250. Tax as a separate and distinct item.

(a) Except as provided in paragraph (b) of this section, Retailers shall add the tax imposed hereby, or the average equivalent thereof, to the Purchase Price or charge, showing such tax as a separate and distinct item, and provide the Purchaser with a receipt showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such Price or charge and 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.

(b) Any Retailer selling malt, vinous, or spirituous liquors by the drink, or any Vendor selling individual items of Tangible Personal Property through coin-operated vending machines, or any Special Sales Event Vendor may include in his sales price the tax levied under this Chapter. No such Retailer or Vendor shall gain any benefit from the collection or payment of such tax except a permitted Vendor Allowance as defined in section 3.04.550.

(c) It is unlawful for any Vendor or Retailer to advertise or hold out or state to the public, or any Purchaser, in any manner, directly or indirectly, that such tax, or any part thereof, will be assumed or absorbed by the Retailer or will not be added to the selling price or that any part thereof will be refunded. (Ord. 500-10)

3.04.260. Sales tax – Exempt property and services. There shall be exempt from sales tax hereunder the following:

(a) Tangible Personal Property Exemptions:

(1) Any right to the continuous possession or use for three (3) years or less of any article of Tangible Personal Property under a lease or contract, if the lessor has paid to the City sales or use tax on such Tangible Personal Property upon its acquisition. The Treasurer may permit a lessor of Tangible Personal Property leased for a period of three (3) years or less to acquire the property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on the property.

(2) The transfer of Tangible Personal Property without consideration, other than the purchase, Sale, or promotion of the transferor's product, to an out-of-city vendee for use outside of this City in selling products normally sold at wholesale by the transferor;

(3) The Sale of Tangible Personal Property for testing, modification, inspection, or similar type of activities in this City if the ultimate use of the property in manufacturing or similar type of activities occurs outside of this City and if the test, modification, or inspection period does not exceed ninety (90) days; and

(4) All Sales and purchases of Tangible Personal Property by a manufacturer that uses the property as a component part of goods that it manufactures, including, but not limited to, high technology goods, and that donates such goods to the United States government; the State or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501 (c) (3) of the "United States Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of the goods included in a single donation exceeds one thousand dollars (\$1,000.00).

(b) Sales Made to Government Organizations: All Sales to the United States government and to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

(c) Charitable Organizations:

(1) All Sales made to Charitable Organizations, in the conduct of their regular charitable functions and activities; except that any veterans' organization that qualifies as a Charitable Organization shall be exempt from taxation under the provisions of this Chapter only for the purpose of sponsoring a special event, meeting, or other function in the City that is not part of the organization's regular activities in the City;

(2) All Occasional Sales by a Charitable Organization; and

(3) A sale by an association or organization of parents and teachers of Public School students that is a Charitable Organization, if the association or organization uses the funds raised through the sale for the benefit of a Public School or an organized Public School activity or to pay the reasonable expenses of the association or organization. For purposes of this exemption, "public school" means a public school of a school district in this State or an institute charter school.

(d) Sales Made to Schools: All Sales made to Schools, other than Schools held or conducted for private or corporate profit.

(e) Exchanged Property: All transactions specified in section 3.04.210(b) in which the fair market value of the

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

exchanged property is excluded from the consideration or Purchase Price because the exchanged property is covered by section 3.04.210(b) or by section 3.04.420(c) and in which, because there is no additional consideration is involved in the transaction, there is no Purchase Price within the meaning of such a term.

(f) Newspapers: The Sale of Newspapers shall be exempt from taxation under this Chapter. This exemption may not be extended to include: magazines, trade publications or journals, credit bulletins, advertising pamphlets, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing service or listings, publications that include an updating or revision service, book or pocket editions of books or other Newspapers not otherwise qualifying under the definition of Newspaper.

(g) Internet Access Services: All Sales and purchases of Internet Access Services, e-mail services, web site hosting and domain name registration.

(h) Refractory Materials: All Sales and purchases of refractory materials and carbon electrodes used by a Person manufacturing iron and steel for sale or profit and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores.

(i) Precious Metal Bullion and Coins: All Sales of Precious Metal Bullion and Coins.

(j) Articles Furnished for Use with Tangible Personal Property for Consumption: Any Sale of any article to a Retailer or Vendor of food, meals, or beverages, which article is to be furnished to a Purchaser or user for use with articles of Tangible Personal Property purchased at retail, if a separate charge is not made for the article to the Purchaser or user, if such article becomes the property of the Purchaser or user, together with the food, meals, or beverages purchased, and if a tax is paid on the Retail Sale.

(k) Container or Bag for Packing Tangible Personal Property for Consumption: Any Sale of any container or bag to a Retailer or Vendor of food, meals, or beverages, which container or bag is to be furnished to a Purchaser or user for the purpose of packaging or bagging articles of Tangible Personal Property purchased at retail, if a separate charge is not made for the container or bag to the Purchaser or user, if such container or bag becomes the property of the Purchaser or user, together with the food, meals, or beverages purchased, and if a tax is paid on the Retail Sale.

(l) Food if purchased with food stamps. For purposes of this exemption, "food" shall have the meaning provided in 7 U.S.C. Section 2012(g) as such section existed on October 1, 1987 or is thereafter amended.

(m) Food if purchased with funds provided by the special supplemental food program for women, infants and children under 42 U.S.C. Section 1786. For purposes of this exemption, "food" shall have the meaning provided in 42 U.S.C. Section 1786 as such section existed on October 1, 1987 or is thereafter amended.

(n) Construction and Building Materials:

(1) All Sales of construction and building materials to contractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(A) The United States government, the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(B) Charitable Organizations in the conduct of their regular charitable functions and activities; or

(C) Schools, other than Schools held or conducted for private or corporate profit.

(2) On application by the Purchaser or seller, the City shall issue to a Contractor or subcontractor a certificate of exemption indicating that the Contractor's or subcontractor's purchase of construction and building materials is for a purpose stated in this subsection and is, therefore, free from sales tax. The City shall provide forms for the application and certificate and shall have the authority to verify that the Contractor or subcontractor is, in fact, entitled to the issuance of the certificate prior to such issuance.

(o) Railroads:

(1) The Sale of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by the common carrier in construction and maintenance of its railroad tracks.

(2) The Sale of Tangible Personal Property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock.

(3) The Sale of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(p) Aircraft:

- (1) The Sale of aircraft used or purchased for use in interstate commerce by a commercial airline.
- (2) The Sale of Tangible Personal Property that is to be permanently affixed or attached as a component part of an aircraft.
- (3) The Sale of a new or used aircraft if:
 - (A) The aircraft is sold to a Person who is not a resident of the City;
 - (B) The aircraft will be removed from the City within one hundred and twenty (120) days after the date of the Sale;
 - (C) The aircraft will not be in the City for more than seventy-three (73) days in any of the three (3) calendar years following the calendar year in which the aircraft is removed from the City pursuant to paragraph (B) of this sub-subsection (3).
 - (D) Any purchaser of an aircraft claiming the exemption of this sub-subsection (3) shall, at the time of purchase, provide to the seller an affidavit that the Purchaser is not a resident of the City and that the Purchaser agrees to pay the tax imposed by this Chapter if the Purchaser fails to comply with the requirements of paragraphs (B) and (C) of this sub-subsection (3).

(q) Agriculture and Livestock:

- (1) The Sale of special fuel used for the operation of farm vehicles when such vehicles are being used on farms and ranches. As used in this subsection, "special fuel" means diesel engine fuel, kerosene, liquefied petroleum gas, and natural gas used for the generation of power to propel a Motor Vehicle on the highways of this State, but does not include "gasoline" which is defined as any flammable liquid used primarily as a fuel for the propulsion of Motor Vehicles, as such definition is further refined in C.R.S. section 39-27-101(12).
- (2) All Sales and Purchases of Farm Equipment.
- (3) Any Farm Equipment under lease or contract, if the fair market value of the equipment is at least one thousand dollars (\$1,000.00) and the equipment is rented or leased for use primarily and directly in any Farm Operation. The lessor or seller of such Farm Equipment shall obtain a signed affidavit from the lessee, renter, or Purchaser affirming that the Farm Equipment will be used primarily and directly in a Farm Operation.
- (4) All Sales and Purchases of Livestock, all Sales and Purchases of live fish for stocking purposes, and all farm close-out sales.
- (5) All Sales and Purchases of feed for Livestock.
- (6) All Sales and Purchases of seeds and orchard trees.
- (7) All Sales and Purchases of straw and other bedding for use in the care of Livestock or poultry.

(r) Drugs and Medical and Therapeutic Devices:

- (1) All Sales of Drugs dispensed in accordance with a Prescription, all Sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician, all Sales of glucose useable for treatment of insulin reactions, all Sales of urine- and blood-testing kits and materials, all Sales of insulin measuring and injecting devices, including hypodermic syringes and needles, all Sales of Prosthetic Devices, all Sales of wheelchairs and hospital beds, all Sales of Drugs or materials when furnished by a doctor as part of professional services provided to a patient, and all Sales of corrective eyeglasses, contact lenses, or hearing aids.
- (2) When sold in accordance with a written recommendation from a licensed doctor, all Sales of Therapeutic Devices, appliances, or related accessories, with a retail value of more than one hundred dollars (\$100.00), that are sold to correct or treat a human physical disability or surgically created abnormality.
- (3) All Sales of Therapeutic Devices, appliances, or related accessories, with a retail value of one hundred dollars (\$100.00) or less, that are sold to correct or treat a human physical disability or surgically created abnormality.
- (4) The exemption also applies to Prescription Drugs and Prosthetic Devices for animals.

(s) Bingo equipment: All Sales of equipment, as defined in C.R.S. section 12-9-102 (5), to a bingo-raffle licensee, as defined in C.R.S. section 12-9-102 (1.2).

(t) Manufactured Homes: Forty-eight percent (48%) of the Purchase Price of factory-built housing, as such housing is defined in section Sec. 3.04.030 (32) shall be exempt from the imposition of sales tax except that the entire Purchase Price in any subsequent Sale of a Manufactured Home, after such Manufactured Home has been once subject to the payment of sales tax by virtue of this Chapter, shall be exempt from imposition of sales tax hereunder.

(u) Components used to produce energy from a renewable energy source:

- (1) All Sales of components used in the production of alternating current electricity from a renewable energy source, including but not limited to wind, shall be exempt from imposition of sales tax hereunder. "Components

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

used in the production of alternating current electricity from a renewable energy source" shall include, but shall not be limited to, wind turbines, rotors and blades, solar modules, trackers, generating equipment, supporting structures or racks, inverters, towers and foundations, balance of system components such as wiring, control systems, switchgears, and generator step-up transformers, and concentrating solar power components that include, but are not limited to, mirrors, plumbing, and heat exchangers. "Components used in the production of alternating current electricity from a renewable energy source" shall not include any components beyond the point of generator step-up transformers located at the production site, labor, energy storage devices, or remote monitoring systems.

(2) Through June 30, 2017, sales of components used in solar thermal systems shall be exempt from imposition of sales tax hereunder.

(A) "Components used in solar thermal systems" shall include, but shall not be limited to

(I) Solar collectors, including flat-plate collectors, evacuated tube collectors, solar air collectors, and concentrating solar thermal collectors;

(II) Tanks for the storage of gases or liquids that have been heated or cooled by solar-generated energy;

(III) Pumps, impellers, and fans for the circulation of gases or liquids that have been heated or cooled by solar-generated energy;

(IV) Heat exchangers used to transfer solar-generated energy;

(V) Support structures, racks, and foundations for any components listed in subparagraphs (I) to (IV) of this paragraph (2)(A); and

(VI) Any other system components such as piping, valves, gauges, fittings, insulation, and controls for any components listed in subparagraphs (I) to (IV) of this paragraph (2)(A).

(B) "Solar thermal system" means a system whose primary purpose is to use energy from the sun to produce heat or cold for:

(I) Heating or cooling a residential or commercial building;

(II) Heating or cooling water; or

(III) Any industrial, commercial, or manufacturing process.

(v) Sales that benefit a Colorado school:

1. A Sale that benefits a Colorado school if the Sale is made by any of the following:

(A) A school;

(B) An association or organization of parents and school teachers;

(C) A booster club or other club, group, or organization whose primary purpose is to support a school activity; or

(D) A school class or student club, group, or organization.

2. As used in this exemption only,

(A) "Parent" means a parent of a student as defined in paragraph (D) of this sub-subsection (2).

(B) "Sale that benefits a Colorado school" means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to the person or entity described in sub-subsection (1) of this subsection, are donated to a school or a school-approved student organization.

(C) "School" means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof.

(D) "Student" means any person enrolled in a school as defined in paragraph (C) of this sub-subsection (2).

w) Sale of Rooms or Accommodations to Permanent Residents: The transaction of furnishing Rooms or Accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a 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, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park, under any concession, permit, right of access, license to use, or other agreement for occupancy of a Room or Accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year.

3.04.270 to 3.04.290. Reserved.

SECTION 3

IMPOSITION OF USE TAX OTHER THAN ON MOTOR VEHICLES

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

3.04.300. Imposition and rate of use tax. Unless otherwise exempted pursuant to Section 2 of this Chapter 3.04, there is levied and there shall be paid a use tax at the rate of three and one-half percent (3.5%), upon the privilege of using or consuming within the City any construction and building materials and upon the privilege of storing, using or consuming within the City any articles of Tangible Personal Property or Taxable Services purchased at retail, from outside the corporate limits of the City. (Ord. 500-10)

3.04.310. Collection of use tax other than on construction and building materials and motor vehicles.

(a) Except as otherwise provided in this section, every Person who uses, stores, or consumes Tangible Personal Property or Taxable Services, which property or service is purchased outside the City and is subject to the use tax imposed pursuant to Section 3.04.300 and who has not paid the sales tax imposed by this Chapter to a Retailer, shall make a return and remit the use tax imposed by Section 3.04.300 to the Treasurer on forms prescribed by the Treasurer, showing in detail the Tangible Personal Property or Taxable Service stored, used or consumed by such Person within the City in the preceding period covered by the remittance and on which property the sales or use tax has not been paid.

(b) Every person subject to the provisions of Section 3.04.300 shall maintain monthly records of the amount of use tax due and shall make a return and remit the use tax due in accordance with Section 3.04.530. Any such return shall be subscribed by the Taxpayer or his authorized agent and shall contain a written declaration that it is made under the penalties of perjury. (Ord. 500-10)

3.04.320. Collection of construction and building materials use tax.

(a) The Contractor, property owner/lessor, and lessee are jointly and severally liable for any tax due under this Section.

(b) Every Contractor, property owner or lessee engaged in construction projects in the City who purchases construction and building materials needed therefor, and to whom a building, fence, right-of-way or sign permit is issued by the City's planning and development, land use or public works departments or similar departments, shall remit, at the time of permit issuance, a use tax deposit to the City prior to the issuance of any such permit, such deposit to insure and indemnify the City for the amount of use tax due within thirty-six (36) months from the date of issuance of the certificate of occupancy for the project or the date of the final inspection of the project by the City ("Use Tax Deposit"). The Use Tax Deposit shall be calculated by multiplying the City use tax rate, as set forth in section 3.04.300, on construction and building materials by fifty percent (50%) of the total valuation of the construction project. Total valuation for the purposes of the Use Tax Deposit shall be determined by the Treasurer and/or the City's building department or official. Use tax due on the actual cost of construction and building materials may be subsequently determined and adjusted through audit. Upon payment of the Use Tax Deposit, the City shall issue to the Taxpayer a receipt identifying the property that is the subject of the Use Tax Deposit and the permit number(s).

(c) Within thirty-six (36) months from the date of issuance of the certificate of occupancy for the project or the date of the final inspection by the City of the project, if it is determined by the City that the actual cost of the construction and building materials for the project is greater than the estimate therefor and that the amount of the Use Tax Deposit is not sufficient to provide for full payment of the use tax, then the additional use tax due must be received by the Treasurer within thirty (30) days of such determination. If it is determined by the City that the Use Tax Deposit is sufficient to pay for the use tax due, then the Use Tax Deposit shall be used to pay the amount of the use tax due, and any excess amount of the Use Tax Deposit shall be refunded to the person who made the Use Tax Deposit within thirty (30) days of such determination.

(d) Every Contractor, property owner or lessee engaged in construction projects in the City who purchases construction and building materials needed therefor and who does not apply for and have issued a permit as described in paragraph (a), or every Contractor, property owner or lessee engaged in construction projects in the City who seeks and obtains prior approval of the Treasurer to remit use taxes in accordance with this subsection (d) shall, on or before the tenth (10) day of each succeeding month following the start of such construction, file a return with the Treasurer attaching all statements and invoices required to be kept under section 3.04.520, along with a summary sheet for the construction and building materials purchased the previous month, and shall thereupon pay to the City the full amount of the use tax due thereon for the preceding month or months. Any failure to make such return and payment of such use tax shall be deemed a violation of this Chapter, and, upon conviction thereof, shall subject the violator to the penalties provided in this Chapter. (Ord. 500-10)

3.04.330. Unpaid use tax on construction and building materials shall constitute a lien.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

The full amount of any use tax due and not paid for construction and building materials, together with penalties and interest thereon as herein provided, shall become a special assessment against the property and shall constitute a lien upon the real property benefited by the improvements upon which the construction and building materials were used or consumed for the amount of the tax. The Treasurer, with prior approval of the City Manager, may then certify the balance due to the County Treasurer, to be placed upon the tax list for the current year, to be collected in the same manner as other taxes are collected. (Ord. 500-10)

3.04.340. Credit for lawfully imposed tax paid to others.

(a) In the event that a sales or use tax of another statutory or home rule city or county has been legally imposed on the Purchaser or user on the Purchase of Tangible Personal Property or Taxable Services or construction and building materials equal to or in excess of the use tax imposed by this Chapter, the use tax imposed hereunder shall not apply to the Storage, use or consumption of such Tangible Personal Property or Taxable Services or use or consumption of construction and building materials. A credit shall be granted against the use tax imposed by this Chapter with respect to a Person's Storage, use or consumption in the City of Tangible Personal property or Taxable Services or use or consumption of construction and building materials purchased by him or her elsewhere; the amount of the credit being equal to the tax actually paid by reason of the imposition of a legally imposed sales or use tax of another statutory or home rule city or county on purchase or use thereof. The amount of the credit shall not exceed the tax imposed by this Chapter.

(b) It is the intent of this Chapter for all City taxes to be paid at the time a building permit is issued. Once such permit is issued, Contractors, property owners or lessees engaged in construction projects in the City are considered to be the end users of construction and building materials in the City and must not pay municipal sales tax to a vendor in another jurisdiction for construction and building materials to be used or consumed at a location in the City. No refund or credit of another municipality's tax will be allowed.

(c) If a Contractor, property owner/lessor or lessee engaged in construction projects in the City purchases such construction and building materials from City Vendors possessing a valid City License, then such Contractor, property owner/lessor or lessee may submit invoices or statements reflecting the purchase thereof and make application to the Treasurer within sixty (60) days directly following the determination by the City of the use tax due, which determination shall be made within thirty-six (36) months from the date of issuance of the certificate of occupancy for the project or date of the final inspection by the City of the project, for credit or refund of any amount paid as sales taxes to the City, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing the payment of the tax. If the Treasurer is satisfied that there has been such payment, then the Treasurer shall either credit the account of the taxpayer if the use tax has not been levied, or refund the amount if the use tax has been paid through a Use Tax Deposit within sixty (60) days after such application shall have been received by the Treasurer. (Ord. 500-10)

3.04.350. Refunds, penalties and interest, recovery and enforcement of obligations.

(a) Refunds on use tax overpayment on construction and building materials or on Tangible Personal Property or Taxable Services subject to such tax shall be issued in accordance with section 3.04.710 of this Chapter. The right of any Person to obtain a refund pursuant to this Chapter shall not be assignable.

(b) Penalties and interest for late remittances or failure to remit the full amount of use tax due hereunder shall be assessed and imposed in accordance with the provisions of sections 3.04.820 through 3.04.840 and 3.04.870 of this Chapter. (Ord. 500-10)

3.04.360. Exemptions to use tax imposed on construction and building materials. The use tax on construction and building materials imposed under this Chapter shall not apply to:

(a) In addition to the provisions in subsection b) below, the storage, use or consumption of Tangible Personal Property or Taxable Services if the sale of such is exempt from sales tax hereunder.

(b) Any of the exemptions set forth in section 3.04.260 not otherwise set forth in this section which are allowed on the use and consumption of construction and building materials under state law as of December 31, 2010. (Ord. 500-10)

3.04.370 to 3.04.390. Reserved.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

SECTION 4

IMPOSITION OF SALES AND USE TAX ON MOTOR AND OTHER VEHICLES

3.04.400. Imposition and rate of sales and use tax on motor vehicles. Unless otherwise exempted, there is levied and there shall be paid a sales or use tax at the rate of three and one-half percent (3.5%), upon the sale, storage, use, or consumption within the City of any Motor Vehicle and other vehicle purchased at retail on which registration is required under state law. (Ord. 500-10)

3.04.410. Collection of the sales or use tax on motor vehicles.

(a) Any resident of the City who purchases a Motor Vehicle, whether new or used, for use within the City must pay the City sales tax on the Purchase Price of any Motor Vehicle upon purchase or use tax upon registration of said vehicle in the county if no City of Evans sales tax was collected. Any use tax imposed shall be paid by the Purchaser and collected by the agent of the Clerk's Office in Weld County at the time of such registration, licensing or obtaining of a certificate of title and the proceeds of such use tax shall be paid to the City periodically in accordance with state law and any agreements between the State Department of Revenue and the City, or Weld County and the City. If the authorized agent of the Clerk's Office of Weld County fails to collect any use tax imposed, then the Treasurer and/or City Manager shall collect such use tax in accordance with the collection and enforcement proceedings set forth in this Chapter.

(b) No registration shall be made of a Motor Vehicle or other vehicle for which registration is required and no certificate of title shall be issued for such Motor Vehicle by the Weld County Clerk or the Colorado Department of Revenue or their authorized agents until any tax due hereunder on the sale, storage, use or consumption of such vehicle has been paid.

(c) To facilitate collection of taxes as provided in this section, the City Council shall certify to the Clerk's Office of Weld County and the Colorado Department of Revenue its current sales and use tax ordinance and any subsequent changes therein.

(d) In the case of a seller-financed sale in which the Seller has added the sales tax due on the Sale to the financed Purchase Price of the Motor Vehicle and the Purchaser has defaulted or otherwise failed to make payments due to the Seller, the Seller shall be entitled to deduct all portions of the unreceived payments that are attributable to the sales tax due on the Sale from the next City sales tax return made by the Seller pursuant to these provisions governing imposition of tax on Motor Vehicles and other vehicles. If the amount to be deducted pursuant to this subsection (d) exceeds the amount of sales tax to be remitted by the seller to the City for the next reporting period, the Seller may carry forward the remaining amount of the deduction to future sales tax returns. In no event shall this subsection (d) be construed to create a right to a refund or any other payment by the City to the Seller. For purposes of this subsection (d), "seller-financed sale" means a Retail Sale of a Motor Vehicle by a seller licensed pursuant to C.R.S. part 1 of chapter 6 of title 12, in which the Seller, or a wholly-owned affiliate or subsidiary of the Seller, collects all or part of the total consideration paid for the motor vehicle in periodic payments and retains a lien on the motor vehicle until all payments have been received. The term does not include a Retail Sale of a Motor Vehicle in which a person other than the Seller provides the consideration for the sale and retains a lien on the Motor Vehicle until all payments have been made. (Ord. 500-10)

3.04.420. Exemptions on the sales and use tax on motor vehicles.

The following shall be exempt from the sales and use tax imposed on Motor Vehicles:

(a) Any exemptions applicable to motor vehicles set forth in section 3.04.260.

(b) Sales to Non-Resident: The sale, storage, use or consumption of a Motor Vehicle or other vehicle upon which registration or licensing is required to a Purchaser who is a nonresident of the City and who purchases such Motor Vehicle or other vehicle for use outside this City and actually so used it for a substantial and primary purpose for which it was acquired and the owner registered, titled and licensed said motor vehicle outside this City.

(c) Exchanged Property:

(1) In the case of Retail Sales involving the exchange of property, on the Purchase Price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or Purchase Price, the fair market value of the exchanged property 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 Motor Vehicle and is exchanged for another vehicle and both vehicles are

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

subject to licensing, registration, or certification under the laws of the State, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(2) The exchange of three or more vehicles of the same type by any Person in any calendar year in transactions subject to the provisions of this Chapter shall be prima facie evidence that such Person is engaged in the Business of selling vehicles of the type involved in such transactions and that he is thereby subject to any licensing requirements necessary to engage in such activity.

(d) Trailers and Trucks:

(1) The Sale, storage, use, or consumption of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this City if such vehicle is purchased from the manufacturer for use exclusively outside this City or in interstate commerce and is delivered by the manufacturer to the Purchaser within this City, if the Purchaser drives or moves such vehicle to any point outside this City within thirty (30) days after the date of delivery, and if the Purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this City and will be removed from this State within thirty (30) days after the date of delivery; and

(2) The Sale or storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this State or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the Purchaser within this State, if the Purchaser drives or moves such vehicle to any point outside this State within thirty days after the date of delivery, and if the Purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this State and will be removed from this State within thirty days after the date of delivery.

(3) The storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body if the vehicle has been relocated within the State, was used in interstate commerce and the owner can provide evidence of the vehicle being previously registered in another state for at least six months.

(e) Emission Standard Qualified Motor Vehicles: The Sale or storage, use or consumption of any Motor Vehicle, power source for any Motor Vehicle, or parts used for converting the power source for any Motor Vehicle, if the gross vehicle weight rating of the Motor Vehicle is greater than ten thousand (10,000) pounds and if the Motor Vehicle, power source, or parts used for converting the power source are certified by the Federal Environmental Protection Agency or any state as provided in the "Federal Clean Air Act" as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard. For purposes of this exemption:

(1) "Motor vehicle" means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of Colorado, including a vehicle that uses a hybrid propulsion system.

(2) "Parts used for converting" shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(3) "Power source" means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

(f) Full Use Dealer Plates: Any Motor Vehicle purchased and held for resale in this City by a licensed Motor Vehicle dealer, as defined in C.R.S. section 12-6-102 (13), who meets the eligibility requirements to receive a full-use dealer plate set forth in C.R.S. section 42-3-116(6)(a)(I), shall be considered to be in the regular course of business and shall not be subject to use tax. A Motor Vehicle shall be considered to be purchased and held for resale if:

(1) The manufacturer's certificate of origin or certificate of title for the Motor Vehicle is assigned to the Motor Vehicle dealer;

(2) The Motor Vehicle is included in a current list of vehicles for retail sale that is prepared by the Motor Vehicle dealer in the ordinary course of business; and

(3) At any given time, the Motor Vehicle is available to be purchased and delivered to a retail customer within three (3) business days. (Ord. 500-10)

3.04.430 to 3.04.490 Reserved.

Sections 5 and 6

Obligations and Responsibilities

3.04.500. Licensing obligations.

(a) License Required: It shall be unlawful (1) for any Person to fail to obtain a License required by this Chapter if such person engages in any Business within the City, which consists, without limitation, of the selling of goods, wares or merchandise or the performance or rendering of any service for charge or the carrying on or engaging in

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

any occupation or (2) for any Person Engaged in Business as such term is defined in this Chapter to fail to obtain a License required by this Chapter.

(b) Failure to obtain a License when so required by this Chapter shall be a violation of this Chapter punishable under the penalty provisions of Chapter 1.16 of this Evans Municipal Code.

(c) Application Contents: Every Person required to obtain a License hereunder shall submit an application in writing to the City that provides the following information on a form approved by the City:

- (1) Applicant's Name;
- (2) Personal address;
- (3) Business name;
- (4) The character and/or type of business. Each and every type of business must be specifically identified and listed;
- (5) Applicable federal taxpayer identification number;
- (6) State of Colorado sales tax license number of the Business;
- (7) Physical location of the Business;
- (8) Physical location phone number;
- (9) Applicable contact phone number, fax, and email address;
- (10) Other facts as may be required by the City such as, but not limited to, driver's license number of an officer or owner of the Business; and
- (11) Information which provides proof that the applicant is:
 - (a) Not in default under provisions of this Chapter or indebted or obligated in any manner to the City except for current taxes.
 - (b) In compliance with all applicable Building, Fire, and Zoning Codes and Ordinances.

(d) Application Must Be Signed: The application must be signed and dated under penalty of perjury by an owner or officer of the Business. A valid digital signature or the equivalent thereof, on a License application transmitted electronically over the Internet or transmitted via other similar means is acceptable and shall be held as a written signature. A signature on a License application sent via facsimile is acceptable and shall be held as a written signature.

(e) Obligation to Report Changes: Any time any information on a License application is no longer current, the holder of the License shall report such change(s) to the City within thirty (30) days.

(f) Each Retail Establishment to be Licensed: In case Business is transacted at one (1) or more separate places by one (1) Person, a separate License for each place of Business shall be required. Each owner of a different Business located at the same location must obtain a separate License for each Business.

(g) Subcontractor Licensing Requirement: A subcontractor working under a general contractor who has a valid unexpired License, shall be exempt from obtaining a license.

(h) License Form: Each License shall be numbered and shall show the name of the Person holding the License, physical location address, mailing address, character of business, the expiration date of the License.

(i) License Carrying or Posting Required: No licensee shall fail to carry any License issued in accordance with the provisions of this Chapter upon his or her person at all times when engaged in the operation, conduct, or carrying on of any retail trade, profession or Business for which the License was granted; however, if such trade or Business is operated, conducted, or carried on at a fixed place or establishment, such License shall be exhibited at all times in some conspicuous place in the place of Business. Every licensee shall produce his or her License for examination when requested to do so by the Treasurer or City Manager.

(j) Nontransferable: No License shall be transferable.

(k) License Fee: Each application for a License and renewal of a License shall be accompanied by payment of a fee in the amount, if any, as may be determined by City Council by resolution.

(l) Expiration, Renewal and Renewal Fees: All Licenses issued shall be annual, commencing on January 1st and expiring on December 31st of each calendar year. On or before December 31st of the calendar year in which the License is expiring, the holder of a License may apply for renewal to the City for the next ensuing calendar year

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

period. A License issued for a new Business issued on or after November 15th of any calendar year shall be valid for the next complete calendar year subject to the renewal provisions of this section and subject further to the licensee's compliance with this Chapter. All applications for renewal shall be made on forms prescribed by the City Manager in consultation with the Treasurer. Failure to obtain a renewal by the December 31st expiration date shall result in payment of an increased renewal fee in accordance with a schedule as may be adopted by City Council by resolution.

(m) Duties of licensees: Every Person holding a License under this Chapter shall:

- (1) Permit all reasonable inspections of the licensed Business;
- (2) Ascertain, and at all times comply, with all laws and regulations applicable to such licensed Business;
- (3) Avoid all forbidden, improper or unnecessary practices or conditions which do, or may affect, the public health, morals or welfare;
- (4) Not operate the licensed Businesses on premises after expiration of the License or during any period in which a License is revoked or suspended; or
- (5) Not loan, sell, give or assign, to any other Person, or allow any other Person to use or display, or to destroy, damage, remove, or to have in his possession, except as authorized by the by law, a License which has been issued to such Person holding a License.

(n) Right of Entry Authorized When: All persons authorized by this Chapter to inspect Licenses and Businesses shall have the authority to enter, with or without search warrants, at all reasonable times the following premises:

- (1) Those for which a License is required;
- (2) Those for which a License was issued and which, at the time of inspection, are operating under such License;
- (3) Those for which a License has been revoked or suspended.

(o) Revocation of License:

- (1) The City Manager may, on reasonable notice and after hearing, revoke the License of any Person found to have violated any provisions of this Chapter.
- (2) Any findings and order of the City Manager revoking the License of any Person shall be subject to review by the District Court upon application of the aggrieved party in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- (3) The City Manager may adopt rules and regulations governing the hearings contemplated by this subsection. (Ord. 500-10)

3.04.510. Obligation to obtain special sales event license and remit taxes.

- (a) No Special Sales Event shall occur without the issuance of a Special Sales Event License to the organizer of the event, the cost of which shall be in accordance with a schedule as may be adopted by City Council by resolution.
- (b) No later than two (2) days before the start of a Special Sales Event, the Special Sales Events organizer shall provide the Treasurer with a list of the names and addresses of all Vendors of the Special Sales Event, and a list of all License numbers of Vendors who have Licenses and are remitting the tax to the City individually.
- (c) Taxes collected at a Special Sales Event shall be remitted as follows:
 - (1) The organizer shall remit all taxes collected by all Vendors at the Special Sales Event, or
 - (2) Individual Vendors holding Licenses may remit taxes due hereunder in accordance with this Chapter and the organizer shall remit Taxes collected by all other Vendors.
- (d) As provided in subparagraph (c), Vendors or organizers of a Special Sales Event shall remit the sales tax due hereunder and complete a tax schedule on a form provided by the Treasurer. The tax schedule and remittance is due fifteen (15) days after the Special Sales Event ends. Only the organizer will be permitted to take the deduction for the Vendor Allowance as provided in section 3.04.550 of this Chapter. (Ord. 500-10)

3.04.520. Obligation to retain records for audits.

- (a) Taxpayer's Retention of Records: It shall be the duty of every Person liable to the City for collection of any tax or for payment of any tax under this Chapter to keep and preserve for a period of at least thirty-six (36) months all original source documents, books, accounts and records as may be necessary to determine the amount of such tax liability. Every Contractor, property owner/lessor or lessee engaged in construction projects in the City shall keep and preserve for at least thirty-six (36) months following the date of issuance of a certificate of occupancy or final inspection all suitable records as described herein, including without limitation, invoices and statements along with a summary sheet showing such purchases, which will allow the accurate determination of the use tax due. For all construction and building materials and supplies subject to the use tax which are not used or consumed in a project

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

for which a certificate of occupancy or final inspection is required to be obtained, all suitable records as described herein shall be kept and preserved for at least thirty-six (36) months after the date of the taxable transaction.

(b) Records to be Made Available for Audit: All such books, databases, accounts and records, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books, shall be maintained by the Taxpayer and shall be open for examination at any time by the Treasurer and/or City Manager.

(c) Costs of Travel Required to Perform Audit: In the case of a Person which does not keep the necessary books, accounts and records within the City, it shall be sufficient if such Person produces within this City such books, accounts and records or such information as shall be reasonably required by the City Manager or Treasurer for examination by the City Manager or Treasurer. In lieu of producing such records within the City, said Person shall pay all reasonable costs of the City associated with traveling to the location where the records are kept in order to perform an examination or audit of such records. Costs may be required to be paid in advance, or as otherwise approved by the City Manager or Treasurer.

(d) Any failure to preserve such statements and invoices shall be deemed a violation of this Chapter, and, upon conviction thereof, shall be punishable under the penalty provisions of Chapter 1.16 of this Evans Municipal Code. (Ord. 500-10)

3.04.530. Obligation to file return and remit tax due; filing due date.

(a) All persons obligated to pay a sales and/or use tax under this Chapter must make and file such returns and/or reports and remit such tax as required hereunder. Failure to do so shall be a violation of this Chapter punishable under the penalty provisions of Chapter 1.16 of this Evans Municipal Code.

(b) All Taxpayers who collect or are obligated to collect any sales tax in accordance with this Chapter must file a sales tax return and remit the sales tax collected for the filing period in accordance with this Chapter and any Taxpayer obligated to remit use tax hereunder must also file a return and remit the use tax for the filing period. Failure to do so shall be a violation of this Chapter punishable under the penalty provisions of Chapter 1.16 of this Evans Municipal Code.

(c) All Taxpayers selling at retail who collect or are obligated to collect any sales tax in accordance with this Chapter and any Person obligated to make a return and remit use tax hereunder shall file a return in accordance with section 3.04.540(c) and as otherwise prescribed herein with the Treasurer on or before the twentieth (20th) day of the month for the preceding month or months under report and remit the amount of use tax imposed by this Chapter or sales tax computed on the Gross Taxable Sales and also the amount of any excess tax collections, less any Vendor Allowance allowed under this Chapter. Persons holding a License must file a required return regardless of whether Retail Sales are made for the reporting period; however, in the event tax due in any reporting period is less than a minimum amount as set by City Council by resolution, such person may carry such amount forward into the subsequent filing period(s) and remit upon such amount meeting the minimum amount set by City Council by resolution, without penalty or interest.

(d) Returns and payments that are mailed shall be deemed and evidenced as timely remitted only if bearing a postmark or cancellation placed by the United States Postal Services with a date of the due date or earlier, and "postmark" as used herein shall specifically not include a date stamp from a private postage meter imprinted other than by the United States Postal Service. As the United States Postal Service does not usually postmark metered mail, in order to comply with the filing deadline herein, it is incumbent on any Taxpayer or Taxpayer agent who uses a private postage meter to ensure that the returns and payment are actually received by the City on the due date.

(e) For purposes of this section, any tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(f) Any due date, payment date, or deadline for paying tax due, paying the License renewal fee, providing information, or taking other action, which falls on a Saturday, Sunday, or legal holiday, recognized by either the federal government or the state, shall be extended to the first business day following such weekend or holiday. (Ord. 500-10)

3.04.540. Contents, consolidation and reporting periods for tax returns.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(a) Tax Return Content, Form, and Signatures: The returns to be filed hereunder shall contain such information and be completed in such manner and upon such forms as the Treasurer may prescribe. When a return filed by a Taxpayer does not include a signature, a correct License number, when applicable, or any other information required by the Treasurer, the Treasurer has the right to reject the same and send the return back to the Taxpayer for correction and further remittance. A valid digital signature, or the equivalent thereof, on a filed return transmitted electronically over the internet or transmitted via other similar means is acceptable and shall be held as a written signature. A signature on a return sent via facsimile is acceptable and shall be held as a written signature.

(b) Consolidation of Returns: Upon prior approval of the Treasurer, a Taxpayer conducting Business in two or more places or locations, whether in or out of the City, and collecting taxes hereunder, may file one (1) return covering all such places or locations, when accompanied by a supplemental report showing the Gross Sales and Gross Taxable Sales and taxes collected thereon for each location within the City.

(c) Reporting Periods: Taxpayers shall report and remit tax due in accordance with a resolution that may be adopted by City Council. If any such Person who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, or if the average amount of remittance increases above the threshold set forth herein, authorization for such alternate method of reporting may be revoked by the Treasurer. Upon such revocation, the Taxpayer shall file returns and pay tax on a monthly basis. Taxpayers may be allowed to carry forward the remittance requirement hereunder and remit upon reaching a minimum remittance amount in accordance with a resolution that may be adopted by City Council. (Ord. 500-10)

3.04.550. Vendor allowance. All Taxpayers selling at retail who collect or are obligated to collect any sales tax in accordance with this Chapter may retain a percentage of the amount of sales taxes to be paid under this Chapter, if any, subject to any maximum limitations on such retained amount, if any, as may be set by City Council by resolution, to cover the expense of collection and remittance of the sales tax for the reporting period ("Vendor Allowance"), but if any such Taxpayer is delinquent in remitting said sales tax other than in unusual circumstances shown to the satisfaction of the Treasurer, such Taxpayer shall not be allowed to retain any Vendor Allowance, and an amount equivalent to the full tax shall be remitted to the Treasurer by any such delinquent Taxpayer. (Ord. 500-10)

3.04.560. Street locator guide. The City shall make available to any requesting Taxpayer a map or location guide showing the boundaries of the City. The requesting Taxpayer may rely on such map or location guide and any update thereof in determining whether to collect sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against a Taxpayer who in good faith, complies with the most recent map or location guide. (Ord. 500-10)

3.04.570. Taxpayer's obligation to provide information upon request. The Treasurer or City Manager may require any Person, by regulation or notice served on such Person, to make such return, render such statement, or keep and furnish such records, or make such information reports as the Treasurer or City Manager may deem sufficient to show whether or not such Person is liable under this Chapter to obtain a License or for payment or collection of the tax imposed herein. (Ord. 500-10)

3.04.580. Obligation to remit excess collections and disputed amounts.

(a) Excess Collections: If any, Taxpayer shall, during any reporting period, collect as a tax an amount in excess of three and one half (3.5%) percent of all total Gross Taxable Sales, such Taxpayer shall remit to the Treasurer the full net amount of the tax herein imposed and also such excess as might have been collected. The retention by the Taxpayer of any excess collections or the intentional failure to remit punctually to the Treasurer the full amount required to be remitted by the provisions of this Chapter, is hereby declared to be a violation of this Chapter.

(b) Disputes Between Purchaser and Seller: Should a dispute arise between the Purchaser and Seller as to whether or not any Sale, service, or commodity is exempt from taxation under this Chapter, nevertheless the Seller shall collect and the Purchaser shall pay the tax and the Seller shall issue to the Purchaser a receipt or certificate, on forms prescribed by the Treasurer, showing the names of the Seller and the Purchaser, the items purchased, the date, Purchase Price paid, amount of tax paid, and a brief statement of the claim of exemption. A refund may be allowed if the sale is exempt in accordance with the provisions of section 3.04.710(a).

3.04.590. Burden of proving exemption. The burden of proving that any Person is exempt from collecting or paying the sales tax upon any goods sold or purchased or the use tax imposed by this Chapter shall be on such Person under such reasonable requirements of proof as the Treasurer or City Manager may prescribe. (Ord.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

500-10)

3.04.600. Obligation to update address with City; Notice by mail.

(a) All Taxpayers shall at all times have the burden of ensuring that its, his or her correct mailing address, e-mail address, and fax number is on file with the Treasurer.

(b) Any notice required to be given to any Person pursuant to this Chapter or the agent or personal representative of the estate of any such Person shall be sufficient if mailed, postpaid by first-class mail to the last-known address of the Person or the agent or personal representative of the estate of such Person. The first-class mailing of any notice under the provisions of this Chapter creates a presumption that such notice was received within three (3) days of mailing by the Person to whom addressed, or the agent or personal representative of the estate of such Person. (Ord. 500-10)

3.04.610. Obligations on sale or purchase of business or property; lien.

(a) New License Required: Any Sale, transfer, or Purchase of an interest in a Business enterprise by any Person, where the respective interest of the Person purchasing or selling as a result of the transaction has changed in any degree, requires, the issuance of a new License.

(b) Must File Final Return: Any Taxpayer who shall sell out his/her Business or stock of goods or all the assets of a Business to another Person or any Person or Taxpayer who quits Business, shall make out the return as required by this Chapter and remit all taxes due within fifteen (15) days after the Business or stock of goods is sold, or the Taxpayer quits Business. The Purchaser and Seller are jointly and severally responsible.

(c) Tax Due on Business Property: Tax imposed hereunder shall be remitted by the purchaser on the Sales or Purchase Price paid for Tangible Personal Property that is acquired with the purchase, transfer of title, or transfer of possession of a Business, with the exception of items to be resold in the ordinary course of business operations of the new business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great as or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump-sum transaction, the tax shall be paid on the book value if no determination has been made. When a Business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable Tangible Personal Property acquired by the Purchaser. A bona fide gift of Tangible Personal Property is not a "Sale". Any such "Gift" shall be documented in writing by the Person making the gift and acknowledged by the Person receiving the gift.

(d) All Prior Taxes are Due: Taxes due upon the Sale of a Business or stock of goods include all sales taxes which were collected or should have been collected prior to the sale, and all use taxes accruing or payable prior to the Sale.

(e) Purchaser to Withhold Payment Until Tax Paid: The Purchaser or successor to the Business, stock of goods, or assets shall withhold a sufficient portion of the purchase money to cover all of said taxes until such time as the former owner produces a receipt from the Treasurer showing that all taxes have been paid in full.

(f) Purchaser Liable for Prior Owner's Unpaid Tax: Purchasers of a Business are liable for any unpaid tax of a predecessor. Taxpayers having outstanding accounts on which sales or use tax has not been remitted must compute and pay the tax at the time of Sale or Purchase.

(g) Seller and Seller's Agent Liable for Tax: The seller or his/her agent will be held liable for tax remittance on the Sale of a Business in the event the Purchaser fails to remit the tax due on the purchase.

(h) Seller and Purchaser Both Liable: Until all taxes due under this Chapter are paid in full, both the former owner and the Purchaser shall jointly and severally remain personally liable thereon and subject to all collection proceedings available under this Chapter. Action by the City against the former owner shall not prevent the exercise by the City of all remedies provided herein against the Purchaser or successor owner.

(i) Delinquent Taxes are a Lien on the Property: Any Person who takes or purchases personal or real property under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes the same subject to the lien for any delinquent taxes owed by the original owner and shall be liable for the

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

payment of all delinquent taxes, interest, penalty and Collection Costs of such prior owner, not however, exceeding the value of the property so taken or acquired. Any Person who takes title to or possession of any real property upon which a tax is owed takes said property subject to the lien for said delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties and Collection Costs. (Ord. 500-10)

3.04.620. Obligations on settlement and distribution of assets.

(a) Satisfaction of Liability: For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships, and corporations in the process of dissolution or which have been dissolved, the Treasurer may agree with the fiduciary or surviving directors upon the amount of taxes due from the decedent, or from the decedent's estate, the trust, receivership, or other fiduciary relationship, or corporation, for any of his/her or its taxable periods, under the provisions of the taxes covered by this Chapter and except upon a showing of fraud, malfeasance or misrepresentation or mutual mistake of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.

(b) Personal Liability: Except as provided in subsection (d) of this section, any personal representative of a decedent, or of the estate of a decedent, or any trustee, receiver, or other Person acting in a fiduciary capacity, or any authorized officer of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his/her control without having first paid any taxes covered by this Chapter due from such decedent, decedent's estate, trust estate, receivership, or corporation, covered by this Chapter and which may be assessed within the time limited by this Chapter, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation, covered by this Chapter and which may be assessed within the time limited by this Chapter.

(c) Notification of Liability: Distribution does not extinguish the lien on property distributed. The distributee of a decedent's estate, or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund, or corporation, shall be liable to the extent the decedent, trust estate, fund, or corporation was liable for tax under this Chapter. Notice to such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(d) Limitation of Liability:

(1) In case tax covered by this Chapter is due from a decedent, or of his/her estate, or by a corporation, in order for personal liability under subsection (b) of this section to remain in effect, determination of the tax due shall be made and notice and demand shall be issued within thirty-six (36) months after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent, or by the corporation, filed after the filing of its return; but a request under this provision shall not extend the period of limitation otherwise applicable.

(2) This subsection (d) will not apply in the case of a corporation unless:

(A) Such request notifies the Treasurer that the corporation contemplates dissolution at or before the expiration of such thirty-six (36) month period;

(B) The dissolution is begun in good faith before the expiration of such thirty-six (36) month period; and

(C) The dissolution is completed.

(3) Upon the expiration of said thirty-six (36) month period, without determination being made and notice and demand being issued, the personal representative or representative of the decedent and the director of the corporation no longer will be liable under the provisions of subsection (b) of this section. (Ord. 500-10)

3.04.630 to 3.04.690. Reserved.

SECTION 7 REFUNDS

3.04.700. Burden of proof for refunds. The burden of proving that Sales, services, and commodities, or the storing, using or consuming of Tangible Personal Property or Taxable Services or the using or consuming of construction and building materials or the payment of tax upon a Motor Vehicle pursuant to this Chapter on which tax refunds are claimed, were not at retail or are otherwise exempt from taxation shall be on the one making such claim under such reasonable requirements of proof as the Treasurer may prescribe. (Ord. 500-10)

3.04.710. Refunds.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(a) Disputes Between Purchaser and Seller; Refund Allowed if Exempt:

(1) In the event of a dispute between the Purchaser and seller as set forth in section 3.04.580 (b), a refund shall be made, or a credit allowed, for the tax so paid under dispute by any Purchaser who has an exemption under this Chapter provided such refund shall be made by the Treasurer after compliance with all the following conditions precedent:

(A) Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed.

(B) Applications for refund must be supported by the affidavit of the Purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller.

(C) Applications for refund must be made upon forms prescribed and furnished by the Treasurer, which forms shall contain such information as the Treasurer shall prescribe.

(2) Upon receipt of such application, the Treasurer shall examine same within a reasonable period of time and shall give notice to the applicant by order in writing of his/her decision thereon. Aggrieved applicants may petition the Treasurer for a hearing on the claim in the manner provided in section 3.04.890.

(b) City's Discovery of Overpayment of Taxes by Taxpayer: Whenever the Treasurer discovers from the examination of a return or pursuant to an audit of a Taxpayer's records that the Taxpayer has overpaid taxes due the City, the Treasurer shall issue a refund of the overpaid taxes to the Taxpayer, unless the overpayment is applied to offset other tax due. The Treasurer shall keep a record of said refund and also a statement which sets forth the reason why such refund was ordered. If the refund totals less than one hundred dollars (\$100.00), the refund amount shall be credited to the Taxpayer's tax account, unless the Taxpayer requests payment of the refund.

(c) Taxpayer's Discovery of Overpayment of Tax: A Taxpayer may apply in writing for a refund of overpaid taxes within sixty (60) days after discovery of the overpayment. The Treasurer may deny such refund by issuing a written denial of refund upon a finding that the Taxpayer did or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of the application for a refund. The Taxpayer may petition the Treasurer for a hearing on the claim in the manner and in the timeframe provided in section 3.04.890. In no event shall such application be made later than three (3) years after the date of overpayment.

(d) Refund to Offset Previous Tax Due: Whenever it is established that any Taxpayer has, for any period, overpaid a tax imposed by this Chapter, and that there is an unpaid balance of tax, penalty, and/or interest accrued according to the records of the Treasurer, owing by such Taxpayer for any other period, so much of the overpayment of tax, penalty, and/or interest allowable thereon as does not exceed the amount of such unpaid balance, shall be credited thereto and any excess of the overpayment shall be refunded.

(e) Refund of Overpayment of use tax on Construction and Building Materials: Application for refund by persons paying a use tax Deposit, as defined in section 3.04.320 (b), shall be made within thirty-six (36) months after the date of the Certificate of Occupancy or date of purchase, whichever is sooner. The Treasurer may require data to accompany the application and may require an audit to be done before refund is paid. (Ord. 500-10)

3.04.720. Statute of limitations on claims for refund. With the exception of a written application of refund submitted to the City that tolls the running of the statute of limitations, no refund shall be allowed or paid under any circumstances more than thirty-six (36) months after the City's receipt of sales or use taxes in question. (Ord. 500-10)

3.04.730. Refunds not assignable. The right of any Person to a refund under this Chapter shall not be assignable. (Ord. 500-10)

3.04.740. Interest on overpayments and refunds.

(a) Interest Allowance Basis: No interest shall be paid upon any overpayment of sales or use tax unless:

(1) Such overpayment was made under protest, and

(2) The Taxpayer has requested a refund in writing within sixty (60) days after the tax was paid.

(b) Payment of Interest:

(1) Calculated interest that would be credited if allowed may be applied against interest owed by the Taxpayer on an audit.

(2) Interest paid on an eligible overpayment of taxes pursuant to subsection (a) under protest shall be allowed at the rate set forth by City Council resolution.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(3) Interest shall accrue only from the date of the Taxpayer's application for a refund. If the refund is to be applied against other taxes owed by the Taxpayer, interest shall not be paid on the refund for the period after the due date of the amount against which the credit is taken.

(c) Refund Erroneously Made to Bear Interest: Any portion of a sales or use tax, or any interest, assessable penalty, additional amount, or additional tax which has been erroneously refunded, shall bear interest at the rate set forth by City Council resolution from the date of the payment of the refund. (Ord. 500-10)

3.04.750. False or fraudulent refund claims.

(a) Violation to Make False Statements: Any applicant for refund under the provisions of this Chapter, or any other Person who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a violation of this Chapter.

(b) Action to Recover Fraudulent Claims: If any Person is convicted of violation of subsection (a) of this section, such conviction shall be prima facie evidence that all refunds received by such Person during the current year were obtained unlawfully and the Treasurer, with prior approval from the City Manager, is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds. (Ord. 500-10)

3.04.760 to 3.04.790. Reserved.

SECTIONS 8 AND 9 COLLECTION AND ENFORCEMENT

3.04.800. Mathematical error on tax returns. In the event that the amount of Tax is understated on the Taxpayer's return due to a mathematical or other error, the Treasurer shall notify the Taxpayer by issuance of a written notice of deficiency, which notice shall contain the amount of tax in excess of that shown in the return which is due and has been assessed. The Taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within fifteen (15) days of the date that such assessment is sent by the Treasurer. (Ord. 500-10)

3.04.810. Limitations period.

(a) When there is a failure to make a return, when a false or fraudulent return is filed with intent to evade tax, or when tax is collected by any Retailer and not remitted to the City, tax together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time.

(b) Except as described in subsection (a) or when the City and Taxpayer agree in writing to extending the limitations period hereunder, the taxes for any period, sales and/or use, together with the interest thereon and penalties with respect thereto, imposed by this Chapter shall not be assessed, nor credit taken, nor shall any notice of lien be filed, or Distraint Warrant issued, or suit for collection be instituted, or any other action to collect the same be commenced more than thirty-six (36) months after the date on which the tax was or is payable, nor shall any lien continue after such period, except that when taxes are assessed before the expiration of such period and notice of lien with respect thereto has been filed prior to the expiration of such period, such lien shall continue after the filing of notice thereof.

(c) For use taxes due on construction and building materials, the thirty-six (36) month period shall commence on the date on which the tax was due or the date of issuance of the Certificate of Occupancy, whichever is later.

(d) The commencement of collection proceedings, including the mailing of a notice of audit, shall toll the running of the limitations period set forth in subsection (b) and (c) of this Section.

(e) Where, before the expiration of the time prescribed in this section for the assessment of tax, both the Treasurer and the Taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon or by the commencement of collection proceedings made before the expiration of the period previously agreed upon. Interest, calculated in accordance with sections 3.04.830 and 3.04.840 may continue to accrue on any and all unpaid tax. (Ord. 500-10)

3.04.820. Failure to file return or pay tax due and penalty - estimate.

(a) If a Person, Taxpayer or Vendor obligated to collect and/or to remit any tax in accordance with this Chapter

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

neglects or refuses to make a return as required in this Chapter or fails to pay any sales or use tax as required by this Chapter, the Treasurer may make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the Taxpayer is delinquent and shall add thereto a penalty as set forth by City Council resolution and provide written notice to the Taxpayer of estimate, penalty and interest imposed along with a demand for payment and such notice shall, in clear and conspicuous type, contain notification, of the time limit to file a protest to the notice by requesting a hearing before the City Manager or a designated hearing officer and that the Taxpayer has a right to elect a hearing on the notice of deficiency pursuant to C.R.S. Section 29-2-106.1(3) within thirty (30) days of the date that the Taxpayer has exhausted local remedies as provided in this Chapter by timely requesting a local hearing before the City Manager or designated hearing officer and the City either fails to hold the hearing or the City has issued a final decision following the hearing.

(b) In the event such an estimate of taxes due is made and penalty assessed, a Taxpayer may be excused from imposition of such estimate and/or penalty if the Person shows that its failure to comply fully with this Chapter is due to reasonable cause at a hearing requested by the Person pursuant to the manner and timeframe set forth in section 3.04.890 of this Chapter. (Ord. 500-10)

3.04.830. Interest on late filing. Interest on sales or use tax filed after the date due will be set forth in a resolution to be adopted by City Council. The interest on delinquent tax combined with Penalty Interest as described in section 3.04.840, will be included in the City Council resolution setting rates. (Ord. 500-10)

3.04.840. Penalty interest. An additional interest component may be imposed. Interest imposed on taxes which are delinquent more than thirty (30) days, may be imposed at the rate set by City Council resolution and shall be deemed a penalty ("Penalty Interest"). (Ord. 500-10)

3.04.850. Audit.

(a) For the purpose of ascertaining the correct amount of total sales tax or total use tax liability, all records required to be maintained by any Taxpayer under this Chapter shall be open for examination and audit at any time by the Treasurer. If any Taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the Treasurer, the Treasurer may either estimate tax due based upon such information as is made available or issue a subpoena to require that the Taxpayer or such Taxpayer's representative attend a hearing or produce any such books, accounts and records for examination.

(b) The Treasurer may conduct an audit by examining any relevant books, accounts and records of such Person.

(c) During the course of any audit, the Treasurer may utilize a representative sample of the Person's records to project the amount of tax deficiency or over payment, if any.

(d) Shall be unlawful for any taxpayer to fail to comply with a subpoena issued pursuant to this section.

3.04.860. Coordinated audit.

(a) The City may conduct an audit in conjunction with one or more other municipalities at its own discretion.

(b) Any Taxpayer holding a License 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 herein.

(c) 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 Treasurer of this City, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which such Person holds a current sales tax license and a declaration that the Person will sign a waiver of any passage-of-time based limitation upon this City's right to recover tax owed by the, Taxpayer for the audit period.

(d) Except as provided in paragraph (a), any Taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of any limitation period, if required, may be audited by this City during the twelve (12) months after request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(e) If this City desires to participate in the audit of a Taxpayer that submits a complete request for a coordinated

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

audit pursuant to this section, the Treasurer shall so notify the appropriate official of the municipality whose notice of audit prompted the Person's request within ten (10) days after receipt of the Person's request for a coordinated audit. The Treasurer 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.

(f) If the Taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the Treasurer shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The Treasurer 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.

(g) If the Taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the Treasurer shall, once arrangements for the coordinated audit between this City and other participating municipalities are completed, provide written notice to the Taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The Treasurer shall also propose a schedule for the coordinated audit.

(h) The coordinated audit procedure set forth in this section shall not apply:

- (1) When the proposed audit is a Jeopardy Audit;
- (2) To audits for which a notice of audit was given prior to the effective date of this Section;
- (3) When a Taxpayer refuses to promptly sign a waiver of limitation; or
- (4) When a Taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subparagraph (c). (Ord. 500-10)

3.04.870. Assessment; penalties and interest.

(a) Assessment, Assessment Notice and Due Date: If the Treasurer determines that any, Taxpayer has failed, neglected, or refused:

- (1) To collect all taxes due; or
- (2) To make a return and pay all taxes due; or
- (3) To remit the proper amount of tax due; or
- (4) To pay in full all taxes due because of negligence, fraud or on a regular basis; or
- (5) To remit taxes due pursuant to an audit, special assessment, or special audit assessment, penalties and interest shall be assessed and the Treasurer shall issue to the delinquent Taxpayer, a written notice of final determination and assessment and demand for payment which notice shall state the full amount of taxes, penalties and interest due, and shall be served personally, by mail, or email, which assessment of deficiency amount will be due and payable within fifteen (15) days of the date that such notice is sent by the Treasurer. The written notice shall contain notification, in clear and conspicuous type, of the time limit to file a protest to the notice by requesting a hearing before the City Manager or a designated hearing officer and that the Taxpayer has a right to elect a hearing on the notice pursuant to C.R.S. Section 29-2-106.1(3) within thirty (30) days of the date that the Taxpayer has exhausted local remedies as provided in this Chapter by timely requesting a local hearing before the City Manager or designated hearing officer and the City either fails to hold the hearing or the City has issued a final decision following the hearing.

(b) Estimated Assessment: If the Treasurer is unable to audit the records of a Taxpayer either due to such Person's refusal or lack of cooperation, due to time constraints, or due to other reasons which the Treasurer may reasonably determine, the Treasurer shall make an estimate based upon such information as may be available and shall issue an assessment as provided herein. If a Taxpayer neglects or refuses to make a return, the Treasurer shall make an estimate, based upon such information as may be available, of the taxes due for the period for which such Person is delinquent.

(c) Penalty for Fraud: If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added, instead of the penalty prescribed in section 3.04.820, a penalty of one-hundred percent (100%) of the total amount of the deficiency to the assessment required by subsection (a). Interest on such deficiency shall accrue at the rate set by City Council by resolution.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(d) Special Penalty for Repeated Enforcement: In any assessment issued to a Taxpayer against whom enforcement proceedings have been commenced in the past, a special penalty, in addition to all others provided in this Chapter, shall also be assessed. This special penalty shall be at the rate set by City Council by resolution. For purposes of this subsection, "enforcement proceedings" shall mean:

- (1) Issuance of a Dstraint Warrant; or
- (2) Filing of an action at law in the district or county court; or
- (3) Three (3) occurrences of the revocation of the Taxpayer's License by the City Manager or issuance of a summons to municipal court for the nonpayment of taxes or a combination of revocations and summonses.

(e) City Manager May Waive Penalty: The City Manager, in consultation with the Treasurer, is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Chapter. If the City Manager, in consultation with the Treasurer, finds that a Person has, in good faith, paid tax to a Vendor, then the City Manager, in consultation with the Treasurer, is hereby authorized to abate the penalty and Penalty Interest, as defined in section 3.04.840 in part or in its entirety.

(f) Interest and Penalty Assessment: Interest and penalties prescribed under this Chapter shall be paid upon notice and demand, and shall be assessed, collected and paid in the same manner as the tax to which it is or they are applicable. If any portion of a tax is satisfied by credit of an overpayment, then no interest or penalty shall be imposed under this section on the portion of the tax so satisfied. (Ord. 500-10)

3.04.880. Jeopardy Assessment.

(a) Jeopardy Enforcement: If the Treasurer finds that collection of the tax will be jeopardized by delay, in the Treasurer's discretion, the Treasurer, with prior approval of the City Manager, may declare the taxable period immediately terminated, determine the Tax, and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the Treasurer may proceed immediately to collect such tax by dstraint as provided in section 3.04.930.

(b) Immediate Enforcement Action: In any other case wherein it appears that the revenue is in jeopardy, the Treasurer, with prior approval of the City Manager, may immediately issue demand for payment; and, regardless of the provisions of section 3.04.890 and section 3.04.900 of this Chapter, the tax shall be due and payable forthwith, and in the Treasurer's discretion, with prior approval of the City Manager, the Treasurer may proceed immediately to collect said tax by dstraint as provided in section 3.04.930.

(c) Security for Payment: Collection under either subsection (a) or (b) of this section may be stayed if the Taxpayer gives such security for payment as shall be satisfactory to the Treasurer. (Ord. 500-10)

3.04.890. Hearings.

(a) Request for Hearing: Within fifteen (15) days of the date that a written notice of deficiency, assessment, or denial of refund is placed in the mail in accordance with section 3.04.600(b) by the Treasurer, any Taxpayer may request a hearing on any proposed tax, penalty, or interest that the City seeks to impose as set forth in such notice by making written application for a hearing to the City Manager, which application must be actually received by the City Manager within such fifteen (15) day period. The request for hearing shall set forth the Taxpayer's reasons for and the amount of the requested changes in the written notice of deficiency, assessment or denial of refund.

(b) Hearing Time and Place: The hearing and the issuance of a final decision thereon shall be held within ninety (90) days after the City Manager's receipt of request for a hearing pursuant to subsection (a), except this period is extended if the delay in holding the hearing or issuing the decision thereon was occasioned by the Taxpayer but, in any such event, such hearing shall be held and the decision thereon shall be issued within one hundred and eighty (180) days of receipt of the Taxpayer's request for hearing pursuant to subsection (a). The City Manager shall notify the Taxpayer in writing of the time and place for such hearing at least thirty (30) days prior to the hearing, unless the Taxpayer requests shorter notice or an extension of time.

(c) Pre-Hearing Conference: If the City, through the Treasurer, and the Taxpayer so agree, an informal pre-hearing conference prior to the hearing to be provided under subsection (a) and shall be conducted in any manner acceptable to the Taxpayer and the City with the purpose of settling the outstanding issues between the parties. If no settlement is reached, the hearing shall be held as scheduled.

(d) City Manager or Designated Hearing Officer to Conduct Formal Hearing: The hearing shall be held before the

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

City Manager or before a hearing officer designated by the City Manager pursuant to rules and regulations for the conduct of such hearing as are promulgated by the City Manager. At the hearing, the Taxpayer shall assert any facts, make any arguments, and file any briefs and affidavits he believes pertinent to his case. Any and all reasonable costs to the City for engaging a hearing officer shall be paid by the Taxpayer requesting the formal hearing if the hearing officer determines no change in the tax due as set forth in the City's issued written final notice of final determination and/or assessment and demand for payment or denial of refund on which the hearing is based. The City Manager or designated hearing officer may request the City and or the Taxpayer to file written briefs or statements prior to or at the hearing in the discretion of the City Manager or designated hearing officer.

(e) Hearing Based on Written Brief: Within timeframes set by the City Manager by rule or regulation, the Taxpayer may also file a written brief and such other written materials or documents as he shall deem appropriate and request that the City Manager or designated hearing officer reconsider the deficiency without a hearing. The City Manager or designated hearing officer shall proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to this section. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing. The City staff and/or agents shall be permitted to respond in writing to the submittals of the Taxpayer. Rebuttal submissions may be permitted at the discretion of the City Manager or designated hearing officer.

(f) Passage of Time Limitation on a Request for Hearing without Taxpayer Action: After the expiration of fifteen (15) days from the date that the written notice of final determination and/or assessment and demand for payment or denial of refund is sent, if the tax has not been paid, or if no written request for hearing has been received, or no written brief has been filed by the Taxpayer, then the written notice of final determination and/or assessment and demand for payment previously sent shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final denial of refund, as the case may be. The Treasurer may promptly take necessary steps to collect all amounts owed.

(g) Adjustment of Tax under Question: Based on the evidence presented at any hearing or filed in support of the Taxpayer's contentions, the City Manager or designated hearing officer may modify or abate in part or in full the tax and the interest and penalty related to such tax at issue at the hearing or may approve a refund.

(h) Formal Hearing Determination Notices: After a formal hearing, upon rejection in whole or in part, of the claim for refund or upon the finding by the City Manager or hearing officer if designated, that upon hearing the evidence, an assessment in whole or in part has been made against Taxpayer validly, the City Manager or hearing officer shall issue and send a written hearing determination notice to the Taxpayer setting forth the amount of claim for refund denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

(i) Tax Due Date after Hearing: Unless an appeal is filed as provided in section 3.04.900, the tax, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the written hearing determination notice is issued and sent to the Taxpayer. (Ord. 500-10)

3.04.900. Appeals.

(a) Appeal of Local Determination: The Taxpayer may appeal the written hearing determination notice issued pursuant to section 3.04.890 within thirty (30) days of the date that such determination is issued by the City Manager or designated hearing officer. Such appeal shall be conducted pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure or by the method of appeals set forth in C.R.S. section 29-2-106, as amended.

(b) Review by the State Department of Revenue: Nothing contained herein shall abridge the Taxpayer's right of appeal to the executive director of the Colorado Department of Revenue as set forth in C.R.S. section 29-2-106.1, as amended. (Ord. 500-10)

3.04.910. Remedies in event of nonpayment.

(a) So long as a final assessment remains unpaid, the City may take any or all of the following enforcement procedures against the defaulting Taxpayer pursuant to this Chapter:

- (1) Take such action as deemed necessary to revoke the Taxpayer's License.
- (2) Issue a summons to the delinquent Taxpayer to appear in the Municipal Court of the City on charges of violating this Code.
- (3) Issue a Dstraint Warrant.
- (4) File a complaint in County or District Court to collect all amounts owed.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(b) Regardless of the collection or enforcement procedures invoked by the City pursuant to this Chapter, all unpaid Taxes, penalties and interest shall be secured by a lien arising by operation of law as provided by this Chapter. (Ord. 500-10)

3.04.920. Lien; Certificate of discharge.

(a) Certificate of Discharge of Property Subject to Lien: If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the Treasurer may issue a certificate of discharge of any part of the property subject to the lien if he finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

(b) Discharge in Event of Partial Satisfaction: If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the Treasurer may issue a certificate of partial discharge of any part of the property subject to the lien if there be paid over to the Treasurer partial satisfaction of the liability in respect to such tax as the amount determined by the Treasurer.

(c) How Values Determined: In determining such values, the Treasurer shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the City.

(d) Certificate of Release Conclusive: A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien of the City upon the property released therein is extinguished, but shall not extinguish, nor release, any portion of the lien nor property not specified in the release. (Ord. 500-10)

3.04.930. Collection by distraint.

(a) Distraint Warrant: The City Manager, upon application therefor received from the Treasurer, may cause to be issued a Distraint Warrant under his/her own hand directed to any agent of the City, including the sheriff of any County of the State, commanding him 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 and Collection Costs;

(1) When any deficiency in tax is not paid within fifteen (15) days from the date of the written notice of final determination and assessment and demand for payment therefor and no hearing has been requested within said period; or

(2) When any other amount of tax, penalty, or interest is not paid within fifteen (15) days from the date of the assessment and demand for payment thereof; or

(3) When any deficiency in tax is not paid within thirty (30) days from the date of issuance of a written hearing determination notice and no appeal from such determination has been made pursuant to section 3.04.900; or

(4) Immediately upon making of a Jeopardy Assessment or of the issuance of a demand for payment, as provided in section 3.04.880.

(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/her usual place of abode with some member of his/her family over the age of eighteen (18) years, or at his/her usual place of business with his/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 City, 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 some newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the City Manager, the agent or sheriff shall cause such notice to be publicly posted at the court house of the county wherein such distraint is made, and copies thereof to be posted in at least two (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 said agent or sheriff if he deems it advisable, but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. 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

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

sheriff conducting the sale may declare the same to be purchased by him for the City. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the City Manager.

(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/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 City Manager shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs and expenses incurred by the City in enforcing collection by distraint, including, but not limited to, attorney's fees and all personnel costs of the City. (Ord. 500-10)

3.04.940. Civil action for recovery of unpaid tax.

(a) Action at Law: In addition to all other remedies set forth herein, the City Manager, upon application therefor from the Treasurer, may also treat any taxes, penalties, or interest due and unpaid as a debt due the City from the Taxpayer personally. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the City Manager upon application therefor from the Treasurer, may receive at law the amount of such taxes, penalties, interest and Collection Costs in such county or district court of the county wherein venue may be proper under the applicable rule of civil procedure. The return of the Taxpayer or the assessment made by the Treasurer as herein provided shall be prima facie proof of the amount due.

(b) Writs of Attachment: Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff and in any such proceedings, no bond shall be required of the Treasurer or the City Manager nor shall any sheriff require of the Treasurer or City Manager an indemnifying bond for executing the writ of attachment, or writ of execution upon any judgment entered in such proceedings; and the Treasurer or City Manager may prosecute appeals or writs of error, in such cases without the necessity of providing bond therefor. The City Attorney, when requested by the City Manager, in consultation with the Treasurer, may commence action for the recovery of taxes due under this Chapter.

(c) Civil Action to Enforce Lien Against Real Property: In any case where there has been a refusal or neglect to pay any tax due the City, the City Manager, in consultation with the Treasurer and with the prior approval of City Council, may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to said tax, to enforce the lien of the City for such tax upon the real property situated in that county or in any other county in the State which may be subject to such lien or to subject any real property or any right, title or interest in real property to the payment of such tax. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and of the City. The proceedings in such action and the manner of sale, the period for and manner of redemption from such sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

(d) Exhaustion of Administrative Remedies: No action to recover amounts as set forth in this section may be filed by the City until the time for the Taxpayer to exercise his/her administrative remedies or to file an appeal has expired. This remedy shall be in addition to all other existing remedies available to the City. No de novo trial of the facts shall be permitted if such Person has had a hearing before the City Manager or designated hearing officer or has had the opportunity for such a hearing, but failed to exhaust his/her administrative remedies. (Ord. 500-10)

3.04.950. Compromise.

(a) Compromise Limitation: After an assessment has become final because the Taxpayer has waived any right to a hearing or because the City Manager or designated hearing officer has issued his or her final decision, the City

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

Manager may compromise any collection proceeding arising under this Chapter.

(b) Compromise Record: Whenever a compromise is made by the City Manager, there shall be placed on file in the office of the City Manager and Treasurer the opinion of the City Manager with the reasons therefor, which may include financial inability of such Person to pay a greater amount, with a statement of:

- (1) The amount of tax assessed;
- (2) The amount of penalty, interest and/or penalty interest imposed by law on the Person, Vendor or Taxpayer against who the tax is assessed; and
- (3) The amount paid in accordance with the terms of the compromise. (Ord. 500-10)

3.04.960 to 3.04.990 Reserved.

SECTION 10 ADMINISTRATION

3.04.1000. Duties and powers of the City Manager and Treasurer. The administration of the City sales and use tax and the licensing provisions of this Chapter is hereby vested in the Treasurer and City Manager. The Treasurer shall have the authority to prescribe forms and the City Manager shall have the authority, in consultation with the Treasurer, to formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Chapter, in conformity with this Chapter and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the Purchase Price. The City Manager in consultation with the Treasurer shall have power and authority to add, enact, promulgate, amend, and rescind rules and regulations to this Chapter that are not inconsistent with the provisions of this Chapter. Regulations adopted, amended, or rescinded by the City Manager shall be effective in the manner and at the time prescribed by the City Manager, subject to the provisions of the Chapter. The City Manager may delegate to any employee, agent, representative or contractor of the City such power and authority as deemed reasonable and proper for the effective administration of this Chapter. (Ord. 500-10)

3.04.1010. Treasurer to examine returns. For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any Taxpayer, the Treasurer shall have power to examine or cause to be examined by an employee, agent, representative, or contractor designated by the Treasurer for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return. Subject to the provisions of the Chapter, the Treasurer is authorized to prescribe the duties and powers of such officers, accountants, experts, and other Persons as may be necessary in the performance of his/her duty. (Ord. 500-10)

3.04.1020. Preservation, production and confidentiality of tax reports, returns and license applications.

(a) City's Preservation of Records: All reports and returns of taxes received by the City covered by this Chapter shall be preserved until the City Clerk orders them destroyed.

(b) Confidential Nature of License Applications and Returns: Except in accordance with judicial order, consent of the Taxpayer, or as otherwise provided by law, the City, to include the Treasurer, City Manager and the City Attorney and their authorized representatives, subject to the Colorado Open Records Act, shall not divulge or make known in any way financial information disclosed in any document, report, or return filed in connection with any of the taxes covered by this Chapter. The City officials charged with the custody of such documents, reports and returns shall not be required to produce them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City, at the direction of the City Manager, in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.

(c) Taxpayer Request for Records: Nothing contained in this section shall be construed to prohibit the delivery to a Person or his/her duly authorized representative of a copy of any return or report filed in connection with his/her tax, and such copies may be certified by the Treasurer, and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)

(d) Publication of Statistics: Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

(e) Records Available to Authorized Jurisdictions: Notwithstanding the provisions of this section, the City Manager or Treasurer in his/her discretion may furnish to the executive director of the Colorado Department of Revenue and his/her authorized personnel, to the taxing officials of the State political subdivisions, to the taxing officials of any other state and its political subdivisions, and to the United States of America, any financial information contained in tax returns and related schedules and documents filed pursuant to this Chapter, or in the report of an audit or investigation made with respect thereto provided, provided that such financial information is to be used only for tax purposes. (Ord. 500-10)

3.04.1030. Interjurisdictional 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 to correctly pay, collect and remit sales and use taxes to the City.

(a) When it is determined by the Treasurer of the City that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the Taxpayer that taxes are being improperly collected and remitted, and that as of the date of the notice such Person must cease improper tax collections and remittances.

(b) The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the Taxpayer. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from such Person and/or Vendor releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

(c) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a Taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

(d) The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same Taxpayer.

(e) The period subject to a claim of recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery. This period may be extended only if a written document was approved by the Treasurer and Taxpayer to toll the running of this thirty-six (36) month period. (Ord. 500-10)

3.04.1040. Joint sales and use tax collection, administration and enforcement. The City may enter into an intergovernmental agreement with another city or city and county for the joint collection, administration and enforcement of sales tax, use tax or both sales and use taxes. (Ord. 500-10)

3.04.1050 through 3.04.1990 Reserved.

3.04 - Sales and Use Tax

Published on City of Evans Colorado (<http://www.cityofevans.org>)



[3.04 - Sales and Use Tax](#)

Source URL (retrieved on *Wed, May 16th 7:56am*):

<http://www.cityofevans.org/municipalcode/304-sales-and-use-tax>