

TITLE V

FINANCE

CHAPTER 2

SALES AND USE TAX

Section:

- 5-2-1: Sales Tax License
- 5-2-2: Levy of Sales Tax
- 5-2-3: Definitions
- 5-2-4: Vendor's Fee
- 5-2-5: General Provisions and Exemptions from Taxation
- 5-2-6: Use of Proceeds
- 5-2-7: Levy of Use Tax
- 5-2-8: Exemptions of Use Tax
- 5-2-9: Collection of Remittance of Use Tax on Construction and Building Materials
- 5-2-10: Collection of Use Tax on Vehicles
- 5-2-11: Neglect or Refusal to Pay the Proper Use Tax - Hearings
- 5-2-12: Appeals
- 5-2-13: Notices
- 5-2-14: Records
- 5-2-15: Enforcement
- 5-2-16: Amendments
- 5-2-17: Limitations
- 5-2-18: Effective Date

5-2-1: Sales Tax License

- A. It shall be unlawful for any person or entity to engage in the business of selling tangible personal property or providing services taxable by the Town's sales tax without first having obtained a Town sales tax license and made payment of the annual Town license fee in the amount as set by the Board of Trustees per Resolution. All licenses shall expire on December 31st of the year in which they are issued. Applications for renewal shall be submitted on forms provided by the Town and shall be accompanied by an annual renewal fee in an amount as set by the Board of Trustees per Resolution. (Ord. 2008-01)
- B. The application for the license shall be submitted on forms provided by the Town and shall contain the name and address of the applicant, the name and address and location of the business, the name and address of the owner of the business premises, and such other information as is necessary or convenient for the administration of this Section or the administration and enforcement of the Town's Sales or Use Tax.

- C. A separate license shall be required for each separate place of business.
- D. The license shall be posted and maintained in a conspicuous place in the business for which it is issued. No license may be transferred from one person's business to another or from one place to another.
- E. No license shall be required if no sales of taxable tangible personal property or services are made.

5-2-2: Levy of Sales Tax

There is hereby imposed a sales tax, the rate of which shall be 3% until July 1, 2006 and 4% thereafter, on the sale of tangible personal property at retail or the furnishing of services. The tangible personal property and services taxable pursuant to this Chapter shall be the same as the tangible property and services taxable pursuant to CRS 39-26-104 except as otherwise provided by CRS 29-2-105 (1)(d). (Ord. 2006-2)

5-2-3: Definitions

Words used in this Chapter, shall be defined as in Article 26, Title 39, C.R.S., unless the context requires otherwise.

5-2-4: Vendor's Fee

The Vendor (Retailer) shall be entitled as Collection Agent for the Town of Olathe to withhold a collection fee in the amount of three-and-one-third percent (3-1/3%) from the total amount remitted by Vendor each month. If any Vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the Vendor shall not be allowed to retain any amount to cover his expense in collecting and remitting said tax, and an amount equivalent to the full three-and-one-third percent (3-1/3%) shall be remitted to the Executive Director by any such delinquent Vendor.

5-2-5: General Provisions and Exemptions for Taxation

- A. The collection administration and enforcement of this sales tax shall be performed by the Executive Director of the Department of Revenue in the same manner as the Colorado State Sales Tax and except as otherwise provided in Article 2, Title 29, C.R.S., the provisions of Article 26 of Title 39, C.R.S., shall govern the collection, and enforcement of this sales tax.
- B. The amount subject to tax under this Chapter shall not include the State Sales and Use Tax imposed by Article 26, Title 39, C.R.S.

- C. For the purpose of this Chapter, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the Town of Olathe or to a common carrier for deliver to a destination outside the limits of the Town of Olathe.
- D. The gross receipts from sales shall include delivery charges, when such charges are subject to the State Sales and Use Tax imposed by Article 26 of Title 39, C.R.S., regardless of the places to which delivery is made.
- E. In the event a retailer has no permanent place of business in the Town of Olathe, or more than one place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Department of Revenue.
- F. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the Town sales tax when such sales meet both of the following conditions:
 - 1. The purchaser is a nonresident of, or has its principal place of business outside the Town of Olathe, and
 - 2. Such personal property is registered or required to be registered outside the limits of the Town of Olathe under the laws of the State of Colorado.
- G. For transactions consummated on or after January 1, 1986, the Town's sales tax shall not apply to the sale of construction and building materials, as the term is used in C.R.S. 29-2-109, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that local use tax has been paid or is required to be paid.
- H. For transactions consummated on or after January 1, 1986, the Town's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing or services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the rate of this tax as in effect from time to time. A credit shall be granted against the Town's sales tax with respect to such transaction equal to the amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the amount of the tax imposed by this Chapter.

- I. This sales tax shall not apply to the purchase of food purchased with food stamps. For the purposes of this Subsection "food" shall have the same meaning as provided in 7 U.S.C. 2012(g), as such section exists on October 1, 1987, or as thereafter amended.
- J. This sales tax shall not apply to the sale of food purchased with funds provided by the Special Supplemental Food Program for Women, Infants and Children, 42 U.S.C. 1786. For the purposes of this Subsection, "food" shall have the same meaning as provided in 42 U.S.C. 1786 as such section exists on October 1, 1987, or as thereafter amended.

5-2-6: Use of Proceeds

1/3 of the net proceeds from the Town's total sales tax shall be earmarked for streets and alleys, including curbs, gutters, sidewalk, drainage and other related equipment and appurtenances. The remainder of the net proceeds may be used for any lawful purposes. (Ord. 2006-2)

5-2-7: Levy of Use Tax

- A. There is hereby imposed a 1% use tax upon the privilege of using, or consuming in the Town of Olathe any construction and building materials purchased at retail, and upon the privilege of storing, using, or consuming in the Town any motor and other vehicles purchased at retail on which registration is required.
- B. The amount of the use tax shall be 1% of the purchase price at retail of the construction and building materials and vehicles subject to the tax imposed by this Chapter.

5-2-8: Exemptions to Use Tax

The use tax adopted herein shall not apply:

- A. To the storage, use or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the Town.
- B. To the storage, use or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.
- C. To the storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his own storage, use, or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into the state by a nonresident to be used in the conduct of a business in this state.

- D. To the storage, use or consumption of personal property by the United States government or the State of Colorado, or its institutions or political subdivision, in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions.
- E. To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use of any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof.
- F. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subject to a sales or use tax of another municipality equal to or in excess of that imposed by this section. A credit shall be granted against the use tax imposed by this section with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him in a previous municipality. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of another municipality on his purchase or use of the property. The amount of the credit shall not exceed the use tax imposed by this Chapter.
- G. To the storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency.
- H. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the Town and he purchased the vehicle outside of the Town for use outside the Town and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of the Town.
- I. To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of this use tax.
- J. To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to the effective date of this use tax.

5-2-9: Collection and Remittance of Use Tax on Construction and Building Materials

- A. A use tax return accompanied by the tax due shall be submitted to the Town on or before the 20th of each month for the previous month during which any taxable transaction occurs on forms supplied by the Town. The use tax return shall contain information as necessary and convenient for the collection and enforcement of this tax. At a minimum the return shall list all purchases at retail of building and construction materials for the preceding month, including any purchases of such materials which may be exempt from the tax by virtue of the provisions of such Section 5-2-8.
- B.
 - 1. In those cases where the building and construction materials subject to tax under this section are to be used in a project requiring a building permit, the taxpayer shall have the option of remitting use tax by the procedure provided for in this Subsection in lieu of the procedure otherwise required in Subsection (A) above.
 - 2. At the time the building permit is issued, the taxpayer shall make a deposit against his use tax liability in an amount of 1% of 50% of the construction value (excluding land) of the project. Prior to the issuance of a Certificate of Occupancy, the taxpayer may obtain a refund if his actual use tax liability is less than the deposit. To claim the refund the taxpayer must submit a use tax return listing all construction and building materials used in the project on forms supplied by the Town. If the taxpayer does not file such a use tax return prior to the issuance of a Certificate of Occupancy, he shall be deemed to have elected to have the deposit satisfy his use tax liability for that project.
- C. No Occupancy Permit shall be issued until the use tax is paid.

5-2-10 Collection of Use Tax on Vehicles

The use tax imposed by this Chapter on vehicles which are required to be registered shall be collected by the Department of Revenue and Montrose County Clerk prior to registration of any vehicle or issuance of a Certificate of Title pursuant to C.R.S. 39-26-208 and remitted thereafter to the Town.

5-2-11: Neglect or Refusal to Pay the Proper Use Tax – Hearing

- A. If any person neglects or refuses to make a return and payment of the use tax or to pay the proper amount of any use tax, the Town may make an estimate based upon such information as may be available of the amount of taxes due for which the taxpayer is delinquent and shall add thereto a

penalty equal to 10% plus interest on the delinquent taxes at the rates imposed for delinquent State sales and use taxes. Such assessment shall be mailed, served upon or delivered to the taxpayer.

- B. Any person aggrieved by such assessment or who requests a refund may apply to the Town within ten (10) days after the delivery or mailing of the notice of assessment or denial of the refund is made to him for a hearing and a correction of the amount of the tax so assessed in which petition he shall set forth the reasons why the tax should be reduced or refund granted. The Town shall notify the petitioner of the time and place fixed by it for the hearing and of the name of the hearing officer which may be the Town Clerk or such other person as the Town Board may designate. After the hearing, the hearing officer may make such order in the matter as is just and lawful.
- C. The hearing shall be informal and no transcript, rules or evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the Town may submit a brief. The hearing officer shall hold such hearing and issue the final decision thereon within ninety (90) days after the Town's receipt of the taxpayer's written request therefore, except the Town may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the Town shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefore.
- D. Whenever the Town determines pursuant to Subsection (B) that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, the Town shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a State hearing on the deficiency pursuant to C.R.S. 29-1-106.1(3). The taxpayer shall also have the right to elect a State hearing on the Town's denial of such taxpayer's claim for a refund of sales or use tax paid.

5-2-12: Appeals

- A. The taxpayer may elect a State hearing on the Town's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section.
- B. As used in this Section, "State hearing" means a hearing before the Executive Director of the Department of Revenue or delegate thereof as provided in C.R.S. 29-2-106.1(3).
- C. The taxpayer shall request the State hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no

right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this Subsection (C). For purposes of this Subsection (C), "exhaustion of location remedies" means:

1. The taxpayer has timely requested in writing a hearing before the Town and the Town has held such hearing and issued a final decision thereon, pursuant to Section 5-2-11.
 2. The taxpayer has timely requested in writing a hearing before the Town and the Town has failed to hold such hearing or has failed to issue a final decision thereon with the time periods prescribed in Section 5-2-11.
- D. If a taxpayer has exhausted his local remedies as provided in Subsection (C) above, the taxpayer may request a State hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in C.R.S. 29-1-106.1(3) through (7).
- E. If the deficiency notice or claim for a refund involves only the Town, in lieu of requesting a State hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the district court of the County as provided in C.R.S. 29-1-106.1(8); provided the taxpayer complies with the procedures set forth in Subsection (C) of this Section.
- F. If the Town reasonably finds that the collection of sales or use tax will be jeopardized by delay, the Town may utilize the procedures set forth in C.R.S. 39-21-111.

5-2-13: Notices

Except as otherwise provided, all notices required to be given to the retailer shall be in writing and either mailed first class, postage prepaid, addressed to his latest mailing address on file with the Town, or served upon the retailer as provided for service of process in civil actions.

5-2-14: Records

- A. It shall be the duty of every person purchasing building and construction materials and vehicles to keep and preserve suitable records of all purchases made by him and such other books and accounts as may be necessary to determine the amount of his use tax liability for a period of 3 years.
- B. Such books, records, and invoices shall be made available for examination by the Town at any reasonable time, and the Town may

enforce such right by an inspection warrant issued by the Municipal Court or a subpoena issued by the District Court.

5-2-15: Enforcement

- A. It shall be unlawful for any person to fail to pay the sales or use tax imposed by this Chapter as due, to file a false or fraudulent return or to evade payment of the sales or use tax.
- B. The use tax imposed by this Chapter shall be a first and prior lien on the tangible personal properties stored, used, or consumed subject only to any valid mortgage or other liens or record on and prior to recording of the notice of lien by the town.
- C. Any use tax not paid when due shall draw interest at the rate for delinquent State use taxes. A 10% penalty shall be imposed.
- D. Upon default of payment of the use tax, the Town, after demand on the person owing such tax, may bring an action in attachment and seize property to secure the payment of said tax, interest and penalties. In any such proceeding no bond shall be required of the Town nor shall any sheriff require from the Town an indemnifying bond for executing a writ of attachment or levy and no sheriff shall be liable for damages when acting in accordance with writs.
- E. When use tax is due on the purchase of building and Construction materials, which are installed upon any real property the Town may certify the amount of any taxes, penalties and interest to the County Treasurer as a delinquent charge to be collected as property taxes against such property.
- F. The Town may maintain an action in a court of competent jurisdiction to recover the amount of any use tax, interest and penalty due under this Chapter.
- G. No Certificate of Occupancy shall be issued for any building until all applicable use taxes on the construction and building materials used in such building are paid.
- H. Remedies provided in this Section are in addition to any other remedies provided by law.

5-2-16: Amendments

The Board of Trustees may amend the provisions of this Chapter by ordinance except as restricted by Article 2, Title 29, C.R.S.

5-2-17: Limitations

The three (3) year limitation period for collection of State use taxes in C.R.S. 39-26-210, shall apply with respect to the collection of the use taxes provided herein.

5-2-18: Effective Date

The use tax imposed by this Chapter shall become effective on March 1, 1988.