

CHAPTER 3

SECTION 2

Sales Tax

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3-2-1 SHORT TITLE.

(Section Enacted by Ord 4-1998)

This Section 3-2 may be known and cited as the Town's Sales Tax Ordinance or Regulations, and is herein referred to as this "Section".

3-2-2 WORDS AND PHRASES DEFINED.

(A) The following words and phrases as used in this Section shall have the following meaning, unless the context otherwise requires:

- (1) "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 such auctioneer is acting either as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in Subsection (17) below, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property which is exempt under the provisions of Subsections 3-2-9(2) and (3), is a retailer or vendor as defined in Subsection (15) below and the sale made by him is a retail sale as defined in Subsection (16), and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by Subsection (2).

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

(3) "Charitable organization" means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) "Cooperative direct mail advertising" means advertising for one 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.

(5) "Direct mail advertising materials" means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.

(6) "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:

(a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;

(b) 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 state, and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

(7) "Engaged in Business in the Town" means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the Town. Engaged in business in the Town includes, but is not limited to, any one of the following activities by a person:

(a) Directly, indirectly, or by a subsidiary maintains a building, store, office,

salesroom, warehouse, or other place of business within the Town;

(b) Sends one or more employees, agents or commissioned sales persons into the Town to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;

(c) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the Town;

(d) Owns, leases, rents or otherwise exercises control over real or personal property within the Town; or

(e) Makes more than one delivery into the Town within a twelve (12) month period.

(8) "Farm close-out sale" means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him in carrying on his farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his farming or ranching operations and is abandoning said operations on the premises whereon they were previously conducted, such sale shall not be deemed a "farm close-out sale" within the meaning of this Section.

(9) "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; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; cold sandwiches; deli trays; and food or drink vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

(10) "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 Town, and embraced within the provisions of this Section. 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 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 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 Section as has actually been received in cash by the taxpayer during the period for which the tax imposed by this Section is due and payable. Taxes paid on gross sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this Section, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

(11) "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 also mean "alternative livestock" as defined under Section 35-41.5-102, C.R.S. "Livestock" shall not mean a pet animal as defined under Section 35-80-102(10), C.R.S.

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

(13) "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 pre-press preparation printing 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 of pre-press preparation printing materials include, but are not limited to, photos, color 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 Section. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers, and cleaners.

(14)(a) "Purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or Colorado State sales or use tax, 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 consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this Section, "purchase price" means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer 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 consumer who defaults or terminates a contract for telecommunication services.

(15) "Retailer" or "vendor" means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.

(16) "Retail sale" includes all sales made within the Town except wholesale sales.

(17) "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; and the sale or furnishing of electrical energy, gas, steam, telephone, or telegraph services taxable under the terms of this article. Neither term includes:

(a) A division of 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 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 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 by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent 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 "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;

(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 Section was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by Subsection (19). For the purposes of this Paragraph (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(18) "Sale" or "sale and purchase", in addition to the items included in Subsection (A)(17), includes 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 and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

(19) Except as otherwise provided in this Subsection (19), the sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this article. In connection with the transactions referred to in Paragraph (k) of Subsection (17) above, 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 (19), 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 consumer.

(20) "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.

(21) "State treasurer" or "treasurer" means the state treasurer of the state of Colorado.

(22) "Tangible personal property" means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by Section 24-70-102, C.R.S., preprinted newspaper supplements which become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials which are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

(23) "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(24) "Taxpayer" means any person obligated to account to the Town for taxes collected or to be collected under the terms of this Section.

(25) "Town" means Town of Ridgway, or any authorized officer, employee or agent thereof.

(26) "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.

(27) "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale, and the latter sales shall be deemed retail sales and subject to the provisions of this article. This term includes sales of all pre-press preparation printing materials, as defined by Subsection (13) above, 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 state.

(28)(a) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit, or use, 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, shall be deemed to be wholesale sales and shall be exempt from taxation under this Section.

(b) As used in Paragraph (a) of this Subsection (28) with regard to food

products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(i) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

(ii) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(29) Sales and purchases of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this Section.

(30) Except as provided in Subsection 3-2-9(A)(1)(I), when right to continuous possession or use for more than three years of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article, and the tax shall be computed and paid by the vendor upon the rentals paid.

3-2-3 SALES TAX LICENSE.

(A) It shall be unlawful for any retailer to engage in the business of selling at retail, without first having obtained an annual license therefore, which license shall be granted and issued by the Town and shall be in force until December 31 of the year issued or until revoked or suspended. Such license shall be granted or renewed only upon application stating the name and mailing address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Town may require. Each application shall be accompanied by a new application fee of \$30 or renewal fee in the amount of \$25. (Ord 2-2019)

(B) In case business is transacted at two (2) or more separate places by one person, a separate license for each place of business shall be required.

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

(D) The Town Council, after reasonable notice and a hearing, may revoke or suspend the license of any person found by the Town Council to have violated any provision of this Section, or having failed to make any required return or payment.

(E) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Section.

(F) (1) Any person engaged in retail sales at a special sales event shall obtain a sales tax license unless the person who organizes such special sales event elects to obtain a special sales event license pursuant to Paragraph (2) of this Section (F) and such person who engages in retail sales at such special sales event elects to remit such sales tax collected to the person who organized such special sales event. Any person engaged in retail sales at a special sales event who has obtained a sales tax license may elect to remit sales tax collected at such special sales event to the person who organized such special sales event and to whom a special sales event license has been issued pursuant to Paragraph (2) of this Section (F).

(2) Any person who organizes a special sales event may apply to the Town for a license for retail sales made at such special sales event. Such special sales event license shall only apply to retail sales made at such special sales event organized by the person to whom the license is issued and shall not apply to any other special sales events or sales. The application for such license shall state the name and address of the person desiring such a license and such other information as the Town may require. A person to whom a special sales event license has been issued pursuant to this Paragraph (2) shall file a separate return and shall make payment of sales tax collected by persons making retail sales at such special sales event who have elected to remit such sales tax collections to the person licensed pursuant to the provisions of this Paragraph (2). Such return shall be filed on the twentieth day of the month following the month in which such special sales event began. Any person issued a special sales event license pursuant to this Paragraph (2) shall maintain, at his place of business, a list showing the name and address of each person making any retail sales at such special sales event, the amount of gross retail sales made by such person at such special sales event, and the amount of sales tax collected by such person on such retail sales which are remitted by such licensee.

(G) An individual having an occasional or isolated sale of tangible personal property is not required to have a Town retail sales tax license. Such sales must be made from the private residences of such individuals and the aggregate dollar amount of such sales may not exceed one thousand dollars for any one calendar year. In addition the following conditions must be met:

(1) Neither the seller nor any member of his household may be engaged in a trade or business where similar items are sold;

(2) An annual report of casual sales must be filed with the Town by every individual making such sales and the sales tax due must be remitted on or before February 1 of the next year, on forms provided by the Town, showing in detail all such sales made during the year; and

(3) All such returns shall be subscribed by the taxpayer or his agent and shall contain a written declaration that they are being made under the penalties of perjury.

3-2-4 SALES TAX LEVIED.

(A) There is levied and there shall be collected and paid a tax in the amount stated in Subsection (B) as follows:

(1) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.

(2) (a) 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:

(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, water-craft and aircraft.

(b) The exchange of three (3) or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this Section 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.

(3) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service;

(4) For gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for 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;

(5) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drug stores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, 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 and which are considered as part of their salary, wages, or income shall be exempt from taxation under the provisions of this Section;

(6) On the entire amount charged to any person for rooms or accommodations as designated in Subsection 3-2-2 (A)(18).

(B) (1) There is imposed upon all sales of commodities and services specified in Subsection 3-2-4 a tax at the rate of three and six tenths percent (3.6%) of the amount of the sale, to be computed in accordance with schedules or systems approved by the Town. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

(Ord 3-2005)

(2) (a) Except as provided in Paragraph (b) of this Subsection (2), retailers shall add the tax imposed, or the average equivalent thereof, to the sale price or charge, 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 consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. To cover the retailer's expense in the collection and remittance of said tax, two and one third percent (2.33%) of said tax may be retained by the retailer unless he is delinquent in payment of the tax.

(Ord 18-2006)

(b) Any retailer selling malt, vinous, or spirituous liquors by the drink or any vendor selling individual items of personal property through coin-operated vending machines

may include in his sales price the tax levied under this Section; except that no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. The schedule set forth in Subsection (1) above shall be used by such retailer in determining amounts to be included in such sales price. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in Section 3-2-5(A), nor shall the use of the schedule set forth in Subsection (B)(1) above relieve such retailer from liability for payment of the full amount of the tax levied by this Section.

(c) All retail sales are 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 limits of the Town, or to a common carrier for delivery to a destination outside the limits of the Town.

3-2-5 COLLECTION AND REMITTANCE OF SALES TAX.

(A) Every retailer shall, irrespective of the provisions of Subsection 3-2-4(B) be liable and responsible for the payment of an amount equivalent to three and six tenths percent (3.6%) of all sales made by him of commodities or services as specified in Section 3-2-4, and shall, before the twentieth (20th) day of each month, make a return to the Town for the preceding calendar month and remit an amount equivalent to said three and six tenths percent (3.6%) of such sales to the Town. Two and one-third percent (2.33%) of such tax to cover the vendor's expense in the collection and remittance of said tax may be retained by the retailer unless he is delinquent in payment of the tax. Licensed retailers shall submit a return each month whether or not any taxable sales are made. Such returns of the taxpayer, or his duly authorized agent, shall contain such information and be made in such manner and upon such forms as the Town may prescribe, including the State's standard Municipal sales and use tax reporting form. The Town may extend the time for making returns and paying the taxes due under such reasonable rules and regulations as it may prescribe. The burden of proving that any person is exempt from collecting the tax on any goods sold and paying the same to the Town, or from making such returns, shall be on said person.

(Ord 18-2006)

(B) Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless the seller shall collect and the purchaser shall pay such tax and the seller shall thereupon issue to the purchaser a receipt, or certificate, on forms prescribed by the Town showing the name of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Town for a refund of such taxes and it shall then be the duty of the Town to determine the question of exemption. It is unlawful for any seller to fail to collect, or purchaser fail to pay any tax levied by this Section, including tax on sales on which exemption is disputed.

(C) It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Section will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added, that all or any part thereof will be refunded.

(D) Reports of Vendors: If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the Town, upon written request of the vendor, may accept reports at such intervals as will, in its opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax; provided, however, the Town may by regulation permit taxpayers whose

monthly tax collected is less than fifty dollars (\$50.00) to make returns and pay taxes at intervals not greater than every three (3) months.

(E) A retailer doing business in two (2) or more places or locations, taxable hereunder, may file one return covering all such business activities engaged within the Town.

(F) If any vendor during the reporting period collects as a tax an amount in excess of three and six tenths percent (3.6%) of his total taxable sales, the vendor shall remit to the Town the full net amount of the tax herein imposed and also such excess. The retention by the retailer or vendor of any excess of tax collections over the three and six tenths percent (3.6%) of the total taxable sales of such retailer or vendor, or the intentional failure to remit punctually to the Town the full amount required to be remitted by the provisions of this Section to the Town, is unlawful.

(Ord 3-2005)

(G) Except as otherwise provided in this Section, retailers shall add the three and six tenths percent (3.6%) tax imposed, or the average equivalent thereof, to the sales price or charge, to be computed in accordance with the schedules or systems approved by the Town.

(Ord 3-2005)

(H) Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer 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 Section upon the full contract price, unless application is made to the Town for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The Town is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale which is subject to the sales tax levied under the provisions of this Section. This subsection shall not be construed to include items upon which the sales tax is imposed on the full purchase price as designated in Subsection 3-2-2(19).

3-2-6 ADMINISTRATION, INTERPRETATION AND ENFORCEMENT.

(A) The Town Manager or designee shall be responsible for the administration, interpretation and enforcement of this Section.

(B) The Town Manager or designee shall adopt such regulations as may be necessary or desirable for the administration and interpretation of this Section.

(C) The Town may use regulations promulgated by the Colorado Department of Revenue applicable to the State sales and use tax as in effect on January 1, 1999 in the administration and interpretation of this Section to the extent such regulations are applicable to and consistent with the provisions of this Section and regulations issued hereunder. This Section shall be construed to reflect the Town's sales tax base as it existed prior to the date of Ordinance 1998-4, as altered thereafter by voter authorization or subsequent amendment.

(D) In the event the retailer has no permanent place of business in the Town of Ridgway, Colorado, or more than one place of business, the place or places at which the retail sales are consummated for the purpose of sales tax shall be determined by rules and regulations promulgated by the Town.

3-2-7 RATE OF INTEREST.

When interest is required or permitted to be charged under any provision of this Section, the annual rate of interest shall be that established by the State Commissioner of Banking pursuant to C.R.S. 39-21-110.5, except as otherwise provided.

3-2-8 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, upon the account of purchase price, that portion of the total tax which the amount paid bears in 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 may determine the tax to be remitted on the basis of his reasonable estimate of the aggregate amount of tax which he has collected from his credit customers during the month. A retailer's estimate of the taxes collected on credit sales made in any month (referred to in this Subsection as "base month") shall be deemed reasonable if the cumulative sum of the monthly amounts of taxes on such credit sales remitted by the retailer on or before the close of the third, sixth, ninth, twelfth, and fifteenth calendar months following the base month is not less than twenty-five percent, forty-three and seventy-five one-hundredths percent, sixty-two and five-tenths percent, eighty-one and twenty-five one-hundredths percent and one hundred percent, respectively, of the total taxes due on the aggregate credit sales made by the retailer in the base month. In no event, however, shall the amount of taxes remitted by the retailer in any month be less than the amount which the retailer actually estimates to have been collected in that 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, as defined in Subsection 3-2-2(A)(17)(k), 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.

3-2-9 EXEMPTION FROM SALES TAX.

(A) (1) There shall be exempt from sales tax under the provisions of this Section, the following:

(a) All sales to the United States government, to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

(b) All sales made to charitable corporations, in the conduct of their regular charitable functions and activities.

(c) All sales which the Town is prohibited from taxing under the constitution or laws of the United States or the state of Colorado.

(d) All sales of cigarettes.

(e) (i) 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.

(ii) 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, which are sold to correct or treat a human physical disability or surgically created abnormality.

(iii) All sales of therapeutic devices, appliances, or related accessories, with a retail value of one hundred dollars or less, which are sold to correct or treat a human physical disability or surgically created abnormality.

(f) All sales and purchases of commodities and services under the provisions of Subsection 3-2-4(A)(6) to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park, and who enters into or has entered into a written agreement for occupancy for a room or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year.

(g) All commodities which are taxed under the provisions of Article 39-27, C.R.S., and all commodities which are taxed under said provisions and the tax is refunded, and all sales and purchases of aviation fuel upon which no Colorado sales tax was in fact collected and retained prior to July 1, 1963; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a sales tax was collected prior to January 1, 1989, shall not be exempt.

(h) All sales made to schools, other than schools held or conducted for private or corporate profit.

(i) Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty (30) days after the date of delivery.

(j) Any sale 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 furnished an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty (30) days after the date of delivery.

(k) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.

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

(m) The transfer of tangible personal property without consideration (other than the purchase, sale, or promotion of the transferor's product) to an out-of-state vendee for use outside of this state in selling products normally sold at wholesale by the transferor.

(n) The sale of tangible personal property for testing, modification, inspection, or similar type of activities in this state if the ultimate use of such property in manufacturing or similar type of activities occurs outside of this state and if the test, modification, or inspection period does not exceed ninety (90) days.

(o) The sale of special fuel, as defined in C.R.S. 39-27-201(8), used for the operation of farm vehicles when such vehicles are being used on farms and ranches.

(p) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required herein.

(q) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by Subsections 3-2-4(A)(1) or (A)(5).

(r) All transactions specified in Subsection 3-2-4(A)(2)(a) in which the fair market value of the exchanged property is excluded from the consideration or purchase price because such exchanged property is covered by Subsection 3-2-4(A)(2)(a)(i) or (ii), and in which, because there is no additional consideration involved in the transaction, there is no purchase price within the meaning of Subsection 3-2-2(A)(14).

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

(i) The United States government, the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

(ii) Charitable organizations in the conduct of their regular charitable functions and activities; or

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

(t) REPEALED BY ORD 6-1999

(u) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline.

(v) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft.

(w) 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.

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

(2) All sales and purchases of livestock; all sales and purchases of live fish for stocking purposes; and all farm close-out sales shall be exempt from taxation under this Section.

(3) All sales and purchases of feed for livestock; all sales and purchases of seeds, and all sales and purchases of orchard trees shall be exempt from taxation under this Section.

(4) (a) Every vendor selling individual items of personal property through coin-operated vending machines shall pay a sales tax on the personal property sold in excess of fifteen cents through such coin-operated vending machines unless the sale is otherwise exempt under the provisions of this Section.

(b) To be eligible for the exemption provided for in this Subsection (4), each vendor shall:

(i) Be licensed under Section 3-2-3.

(ii) Maintain a record of the identification number, ownership, location, and disposition of every coin-operated vending machine used by him in his operation as a vendor.

(iii) Within sixty (60) days after commencing business as such vendor, submit to the Town an accurate list containing the information required under Subparagraph (ii) of this Paragraph (b) and submit such list annually thereafter on January 1.

(iv) Make application to the Town for identification numbers to be affixed to every such coin-operated vending machine, in accordance with rules and regulations promulgated by the Town.

(v) Remit a fee of ten cents per machine with the application submitted under this Paragraph (b), to defray the expenses of the Town in furnishing such identification numbers.

(c) Any unregistered coin-operated vending machine found being used for retail sales at any place in this Town without the prescribed identification number affixed thereto may be seized without warrant by the Town, its agents, or employees or by any peace officer when directed or requested by the Town. At the time of seizure, written notice of seizure shall be given to the proprietor or person in charge of the business, or to the agents or employees of the proprietor or person in charge of the

business, where the vending machine is seized. The Town shall also give notice by first-class mail to the person whose name and mailing address appear on the machine. The Town shall not be required to seize and confiscate any unregistered vending machine or assess a penalty when there is reason to believe that the owner thereof is not intentionally evading the tax imposed by this Section.

(d) In addition to any other penalty provided by law, the Town is authorized to assess and collect a penalty of twenty-five dollars for each unregistered vending machine being operated in the Town.

(e) Upon proof of ownership, the Town shall deliver to the owner thereof any vending machine seized under Paragraph (c) above after payment of the twenty-five dollar penalty and seizure costs, if the owner is liable therefore, and upon registration of the machine. At the expiration of sixty (60) days after the date of notice, any unregistered vending machine and the contents therein still in the possession of the Town may be sold at public sale to the highest bidder, but, prior to any such sale, ten (10) days' notice of the sale shall be given by first-class mail to those entitled to notice under Paragraph (c) above.

(5) All sales and purchases of straw and other bedding for use in the care of livestock or poultry shall be exempt from taxation under this Section.

(6) Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S., shall be exempt from taxation under this Section; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in Section 42-1-102(106)(b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of this Section, shall be exempt from taxation under this Section.

(7) In any case in which a sales tax has been imposed under this Section on lubricating oil used other than in motor vehicles, the purchaser thereof shall be entitled to a refund equal to the amount of the Town sales tax paid on that portion of the sale price thereof which is attributable to the federal excise tax imposed on the sale of such lubricating oil. The refund allowed under this Subsection shall be paid by the Town upon receiving evidence that the purchaser has received under Section 6424 of the federal "Internal Revenue Code of 1986", as from time to time amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund shall be made upon such forms as shall be prescribed and furnished by the Town, which forms shall contain such information as the Town may prescribe.

(8) 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 shall be exempt from taxation under this Section.

(9) All sales of food purchased with food stamps shall be exempt from taxation under this Section. For the purposes of this Subsection (9), "food" shall have the same meaning as provided in 7 U.S.C. Section 2012(g), as such Section exists on October 1, 1987, or is thereafter amended.

(10) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. Section 1786, shall be exempt from taxation under this Section. For the purposes of this Subsection (14), "food" shall have the same meaning as provided in 42 U.S.C. Section 1786, as such Section exists on October 1, 1987, or is thereafter amended.

(11) (a) All occasional sales by a charitable organization shall be exempt from taxation under this Section.

(b) For purposes of this Subsection (11), "occasional sales" means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

(i) The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve (12) days, whether consecutive or not, during any one calendar year.

(ii) 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

(iii) The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars during any one calendar year.

(12) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the tax herein imposed when such sales meet both of the following conditions:

(a) The purchaser is a non-resident or has his principal place of residence outside the Town of Ridgway.

(b) Such personal property is registered or required to be registered outside the limits of the Town of Ridgway.

(13) 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 a local use tax has been paid or is required to be paid.

(14) The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of three and six tenths percent (3.6%). A credit shall be granted against the Town's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed three and six tenths percent (3.6%).

3-2-10 DISPUTES AND REFUNDS.

(A) A refund shall be made, or a credit allowed, for the tax paid under dispute by any purchaser who has an exemption as provided in this Section. Such refund shall be made by the Town after compliance with the following conditions precedent:

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

(2) Applications must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller; and be made upon such forms as shall be prescribed by the Town, which forms shall contain such information as Town shall prescribe.

(B) Upon receipt of such application, the Town shall examine the same with all due speed and shall give notice to the applicant by order in writing of the decision thereon.

(C) Aggrieved applicants, within twenty (20) calendar days after such decision is mailed to them, may petition the Town for a hearing on the claim in the manner provided in Subsections 3-2-19 and 3-2-20.

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

(E) The burden of proving that sales, services, and commodities on which tax refunds are claimed, are exempt from taxation under this Section, or were not at retail, shall be on the one making such claim. Should the applicant for refund be aggrieved at the final decision of the Town, he may proceed to have the same reviewed in the manner provided for review of other decisions of the Town in Sections 3-2-19 and 3-2-20.

3-2-11 RETURN CONFIDENTIAL.

(A) Except in accordance with court order, as necessary in any action brought or defended by the Town, or as otherwise herein provided, the Town shall not release any return for inspection, or copying, or divulge any information gained from any return filed under the provisions of this Section from which the volume of sales or amount of taxes paid of any individual retailer can be determined.

(B) Sales tax returns shall be considered confidential financial information under the State Public Records Act.

(C) Nothing contained in this Subsection shall be construed to prohibit the delivery to a person or his duly authorized representative of a copy of any return or report filed by him in connection with his own tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof nor to prohibit the inspection, reproduction and use by the Town in the administration and enforcement of this Section.

(D) Reports and returns shall be preserved for three (3) years and thereafter until the Town orders them destroyed.

(E) Nothing contained in this Subsection shall prohibit the sharing of sales tax information with the State Department of Revenue or Ouray County.

3-2-12 REVIEW OF RETURN.

(A) As soon as practicable after the return is filed, the Town shall examine it. If it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return to be due, the tax shall be recomputed.

(B) If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same persons.

(C) If the amount paid is less than the amount due, the difference, together with interest

thereon as provided in Subsection 3-2-7, shall be paid by the vendor twenty (20) calendar days after written assessment and demand to him from the Town. The taxpayer may appeal such assessment to the Town Manager pursuant to Subsection 3-2-19.

3-2-13 INTEREST ON UNDERPAYMENT.

(A) If any amount of sales or use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Subsection 3-2-7 shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is mailed by the Town.

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

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

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

3-2-14 SALES TAX-DEFICIENCY DUE TO NEGLIGENCE.

If any part of the deficiency in payment of the sales tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the Town with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Subsection 3-2-7, in addition to the interest provided by Subsection 3-2-13, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable twenty (20) calendar days after written notice and demand to him by Town. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable twenty (20) calendar days after written notice and demand by the Town and an additional three percent (3%) per month on said amount shall be added from the date the return was due until paid.

3-2-15 INVESTIGATIONS AND HEARINGS.

(A) For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the Town may audit the business records and examine all relevant books, papers, records, or memoranda of any such person at his place of business, or elsewhere, and it shall be the duty of such person to make such relevant information available during reasonable hours for the examination of the Town. In the event the Town cannot ascertain the correctness of the return or the amount of tax due by such examination, the Town may hold further investigations and hearings concerning any matters covered by this Section and may issue subpoenas to require the

attendance and testimony of any person or the production of any documents.

The Town Manager or his duly authorized deputies shall have power to administer oaths to such persons.

(B) The Town Manager or any party in an investigation or hearing before the Town Manager may take the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and to that end the Town may compel the attendance of witnesses and the production of books, papers, records or memoranda.

(C) The District or Municipal Court, upon the application of the Town, may enforce any subpoena issued by the Town for attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony.

(D) If the results of any audit indicate that taxes paid were in excess or less than what was due, the procedures of Subsections 3-2-12 and 3-2-18 shall be followed. Interest and penalties shall be assessed pursuant to Subsections 3-2-13 and 3-2-14. Amounts due may be collected as provided in this Section for any delinquent taxes.

3-2-16 RECORD OF SALES.

It shall be the duty of every person engaged or continuing in business in the Town, for the transaction of which a license is required under this Section, to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable. Each retailer shall keep sufficient information to establish deductions for wholesale sales, including purchaser's name and State sales tax license number, and to establish deductions for sales to tax-exempt entities, including State tax exempt numbers of the purchaser. Exemptions or deductions taken without documentation shall be disallowed. It shall be the duty of every person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at any time by the Town.

3-2-17 TAX LIEN.

(A) The tax imposed by this Section shall be a first and prior lien upon the goods and business fixtures of or used by any retailer under lease, title retaining contract, or other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature.

(B) Any retailer who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return as provided in this Section, within ten (10) days after the date he sold his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the Town showing that the taxes have been paid, or a certificate that no taxes are due.

(C) If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided and the taxes shall be due and unpaid after the ten (10) day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner.

Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes same subject to the lien for any delinquent sales tax owned by such retailer, and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

(D) Whenever the business or property of any taxpayer subject to this Section shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this Section and for which said retailer is in any way liable under the terms of this Section shall be a prior and preferred claim against all the property of said taxpayer, except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as provided in Subsection 3-2-18 on the property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer. No sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this Section under process or order of any court, without first ascertaining from the Town, the amount of any taxes due and payable under this Section, and if there be any such taxes due, owing or unpaid, it shall be the duty of such officer to pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other pre-existing claims or liens as above provided. For the purpose of this Section, the term "taxpayer" includes "retailer".

3-2-18 RECOVERY OF TAXES, PENALTIES AND INTEREST.

(A) All sums of money paid by the purchaser to the retailer or seller as taxes imposed by this Section shall be and remain public money, the property of the Town, in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the Town until paid to the Town, and for failure to pay the same to the Town, such person shall be punished for a violation hereof.

(B) (1) If any person neglects or refuses to make a return in payment of the tax or to pay any tax, as required by this Section, the Town shall make an estimate based on 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 equal to the sum of fifty dollars (\$50.00) for such failure or fifteen percent (15%) thereof plus one-half percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) in the aggregate and interest on such delinquent taxes at the rate set under Subsection 3-2-7. Promptly thereafter, the Town shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be sent by first class mail, directed to the last address of such person on file with the Town. (Ord 2-2019)

(2) Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town twenty (20) calendar days from the date of mailing; provided, however, that within said twenty (20) calendar day period such delinquent taxpayer may petition the Town Manager, pursuant to Subsection 3-2-19 for a revision or modification of such assessment.

(C) (1) If any taxes, penalty or interest imposed by this Section and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided herein, are not paid within five (5) days after the same are due, the Town shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the Town claims a first and prior lien therefore on the real and tangible personal property of the taxpayer except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose

rights shall have attached prior to the filing of the notice as herein provided on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

(2) Said notice shall be on forms prepared by the Town and shall be verified by the Town Manager or his duly qualified deputy or any duly qualified agent of the Town, whose duties are the collection of such tax, and may be filed in the office of the clerk and recorder of any county in this State in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute a notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice is filed or not, the Town may issue a warrant directed to any duly authorized revenue collector or to the sheriff of any county in this State commanding him to levy upon, seize and sell sufficient of the real and personal property of the tax debtor found within his county for the payment of the amount due, together with interest, penalties and costs, subject to valid pre-existing claims or liens as above provided.

(D) Such revenue collector or sheriff shall forthwith levy upon sufficient property of the taxpayer, or any property used by such taxpayer in conducting his retail business, and said property so levied upon shall be sold in all respects, with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishments shall apply. The sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

(E) Any lien for taxes as shown on the records of the county clerks and recorders as herein provided shall, upon the payment of all taxes, penalties and interest covered thereby, be released by the Town in the same manner as mortgages or judgments are released.

(F) (1) The Town may also treat any such taxes, penalties or interest due and unpaid as a debt due the Town from the vendor. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the Town may recover at law the amount of such taxes, penalties and interest in any County or District Court of the county wherein the taxpayer resides or has his principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the Town, as herein provided, shall be prima facie proof of the amount due.

(2) Such actions may be actions in attachments, and writs of attachment may be issued to the sheriff, and in any such proceeding no bond shall be required of the Town, nor shall any sheriff require of the Town an indemnifying bond for executing the Writ of Attachment, or Writ of Execution upon any judgment entered in such proceedings; and the Town may prosecute appeals in such cases without the necessity of providing bond therefore. It shall be the duty of the Town Attorney when requested by the Town to commence action for the recovery of taxes due under this Section, and the remedy shall be in addition to all other existing remedies, or remedies provided in this Section.

(G) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the Town may be made a party defendant for the purpose of obtaining a judgment or determination of its lien upon the property involved therein.

(H) The Town Manager is hereby authorized to waive, for good cause shown, any interest or penalty assessed in this Section.

(I) In addition to any other remedy, the Town may certify any delinquent taxes, penalties, interest or other charges due hereunder to the County Treasurer to be collected similarly as taxes against the taxpayer's property.

(J) The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Section shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the Town may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

3-2-19 APPEALS TO TOWN MANAGER.

(A) Any person aggrieved by an assessment made upon him or refund denied by the Town may apply to the Town Manager by petition in writing within twenty (20) calendar days after the notice of assessment or denial is mailed 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 amount by which such tax should be reduced or refund granted. The Town Manager shall notify the petitioner in writing of the time and place fixed by him for such hearing. After such hearing, the Town Manager shall make such order in the matter as is just and lawful.

(B) Whenever the Town determines pursuant to Subsection (A) 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 sales and 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 denial of such taxpayer's claim for a refund of sales or use tax paid.

(C) The hearing before the Town Manager shall be informal and no transcript, rules of 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 Town Manager 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.

3-2-20 APPEALS.

(A) The taxpayer may elect a State hearing on the Town Manager's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Subsection.

(B) As used in this Subsection, "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 local remedies" means:

(1) The taxpayer has timely requested in writing a hearing before the Town Manager and such Town Manager has held such hearing and issued a final decision thereon, pursuant to Subsection 3-2-19.

(2) The taxpayer has timely requested in writing a hearing before the Town Manager and the Town Manager has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in Subsection 3-2-19 (C).

(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. 29-2-106.1(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. 29-2-106.1(8); provided the taxpayer complies with the procedures set forth in Subsection (C) of this Subsection.

(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.

3-2-21 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.

3-2-22 SALES TAX; MAP OF MUNICIPAL BOUNDARIES.

The Town shall make available to any requesting vendor a map showing the boundaries of the Town. The requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales tax. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it.

3-2-23 PENALTY AND REMEDIES.

(A) It shall be unlawful to willfully fail or refuse to make any sales tax return required in this Section, to willfully make a false or fraudulent sales or use tax return, to willfully fail to pay any sales tax owed, to aid or abet another in an attempt to evade payment of any sales tax, or to violate any provision of this Section.

(B) Any person convicted of such a violation may be punished by a fine of up to \$300.
(Ord 1-2017)

(C) The Town may assess an administration penalty of \$50 for each day any person required to have a license engages in the business of selling retail within the Town without a license. (Ord 2-2019)

(D) Nothing in this Section shall preclude the Town from utilizing any other applicable penalties or remedies for the collection or enforcement of its sales taxes.

3-2-24 COORDINATED AUDIT.

(A) Any taxpayer licensed in the Town pursuant to Subsection 3-2-3, 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.

(B) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Town, by certified mail return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon this Town's right to recover tax owed by the vendor for the audit period.

(C) Except as provided in Subsection (G) of this Subsection, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of any passage-of-time based limitation upon the Town's right to recover taxes owed for the proposed audit period may be audited by this Town during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(D) If this Town desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to Subsection (C) of this Subsection, the Town shall so notify the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Town shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

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

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

(G) The coordinated audit procedure set forth in this Subsection shall not apply:

(1) When the proposed audit is a jeopardy audit;

(2) When a taxpayer refuses to promptly sign a waiver of any provision that could limit, based upon passage of time, the Town's right to recover for a portion of the audit period; or

(3) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Subsection (B) above.

3-2-25 INTER-MUNICIPAL CLAIMS FOR RECOVERY.

(A) The intent of this Subsection is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect and remit sales taxes to the Town.

(B) As used herein, "Claim for Recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(C) When it is determined by the Town that sales tax owed to the Town has been reported and paid to another municipality, the Town shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collection and remittances.

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

(E) Within ninety (90) days after receipt of a Claim for Recovery, the Town 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 Town shall remit the undisputed amount to the municipality submitting the Claim within thirty (30) days of approval. If a Claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a Claim for Recovery may only be made for good cause.

(F) The Town may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer.

(G) The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax received the Claim for Recovery.

3-2-26 NOTICE OF SALES TAX ORDINANCE AMENDMENT.

(A) In order to initiate a central register of sales tax ordinances for municipalities that

administer local sales tax collection, the Town shall file with the Colorado Municipal League a copy of the Town sales tax ordinance reflecting all provisions in effect on the effective date of this Section.

(B) In order to keep current the central register of sales tax ordinances for municipalities that administer local sales tax collection, the Town shall file with the Colorado Municipal League prior to the effective date of any amendment a copy of each sales tax ordinance amendment enacted by the Town.

(C) The Town shall also file a copy of this Section and any amendments thereto with the Colorado Department of Revenue.

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

3-2-27 PARTICIPATION IN SIMPLIFICATION MEETINGS.

The Town Manager shall cooperate with and participate on an as needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

3-2-28 ALLOCATION OF FOOD TAX REVENUE.

The net increase in revenue due to re-instituting the tax on food and any interest thereon shall be allocated and spent for park purposes.

(Ord. 6-1999)