

TAXATION

Chapter 160

TAXATION

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[HISTORY: Art. I, adopted by the Board of Trustees (now Mayor and Town Council) of the Town of Frisco 01-26-79, Ord. 79-03; Art. II, adopted by the Board of Trustees (now Mayor and Town Council) of the Town of Frisco 06-06-89, Ord. 89-18; Art. III, adopted by the Mayor and Town Council 10-15-91, Ord. 91-21. Section 160-9 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

ARTICLE I Sales Tax

[Adopted 01-26-79, Ord. 79-03; Article I Repealed in its entirety save and except Section 160-04, 02-08-05, Ord. 05-02]

Division 1 Interpretation

§ 160-1.1. Words and Phrases Defined. [Amended 10-25-05, Ord. 05-25; 12-12-06, Ord. 06-36]

When not clearly indicated otherwise by the context, the following words and phrases, as used in this Article, shall have the following meanings:

Access services means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

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Auction sale means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

Automotive vehicle means any vehicle, including every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air.

Automotive vehicle includes, but is not limited to, motor vehicles, trailers, or semi trailers, and mobile homes. Automotive vehicles shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

Casual sale means an individual, single or incidental transaction which in itself does not constitute the carrying on of business.

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.

Charitable organization includes an organization possessing a current and valid exemption from federal taxation under Section 501(c) of the Internal Revenue Code, or its successor section.

Coin-operated device means any device operated by coins or currency.

Commercial packaging materials means containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions:

- A. Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;
- B. Is transferred by said person along with and as a part of the finished product to the purchaser; and
- C. Is not returnable to said person for reuse.

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Construction equipment means any equipment used by a person in making improvements or building structures.

Construction materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, whether intended for public or private use. Construction materials include, but are not limited to, such things as: Asphalt, bricks, builder's hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lathe, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe vales and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. Such materials, forms or other items, when used, which do not remain as an integral or inseparable part of a completed structure or project, are not *construction materials*.

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

Consumption means the act or process of consuming: it includes waste, destruction or use. Consumption is the normal use of property for the purpose for which it was intended.

Distribution means the act of distributing any article of tangible personal property purchased at retail for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers' guides, catalogues, directories or other property given as prizes, premiums or for goodwill or in conjunction with the sales of other commodities or services.

Drugs dispensed in accordance with a prescription means drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacy, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Employee means any person working for pay under the control and direction of an employer.

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 the person:

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- A. Directly, indirectly or by a subsidiary maintains a building, store, office salesroom, warehouse or other place of business within the taxing jurisdiction;
- B. Sends one (1) or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons;
- C. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- D. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;
- E. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

Excess tax means that amount of tax collected during the reporting period that is in excess of two percent (2%) of Town net taxable sales and services, and which excessive collection must be remitted to the Town using the method described herein.

Exemptions means those deductions from adjusted gross sales and services in order to arrive at a taxable base, which exemptions may include exempt transactions (in whole or in part), sale or purchase of exempt commodities, articles or services, or sale to exempt "persons" who may either be exempt on their direct purchase or exempt on the type of commodity, articles or services purchased, all as set forth in Section 160-8.10.

Farm close-out sale means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

General Government Director means the Town Manager of the Town or his or her designee.

Gross sales of service or gross taxable sales means the total amount received in money, credit, property or other reconsideration valued in money for all sales, leases or rentals of tangible personal property or services.

License means a Town business or sales tax license.

License officer means the General Government Director of the Town.

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

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

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livestock” as defined under section 35-41.5-102, C.R.S., but shall not mean a pet animal as defined under section 35-80-102(10), C.R.S.

Lodging services means the short-term (less than thirty [30] consecutive days) leasing or rental of any hotel room, motel room, apartment hotel, lodging house, motor hotel, guest house, trailer coach, mobile home, auto camp, trailer court, condominium unit, town home, time share unit, private residence or other accommodation.

Manufacturing means the application of manual labor or machinery time to materials to produce a usable item of tangible personal property to provide a service. 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 sales tax.

Medical supplies means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose useable for treatment of insulin reactions; urine and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids.

Municipality means any municipal corporation or similar form of local government including any town, city and county, whether organized pursuant to charter, constitution, or statute, in Colorado or another state, except counties, school districts or special districts, and the Town of Frisco.

Net taxable sales and services means adjusted gross sales and services less authorized “exemptions” there from.

Newspaper means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term *newspaper* does not include: magazines, trade publications or journals, credit bulletins, advertising insets, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Open to the public means any place, event or activity to which the admission or access is open to members of the public, whether upon payment of a charge or fee or not.

Pay television shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed.

Person means any individual, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or

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representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

Preprinted newspaper supplements means inserts, attachments or supplements circulated in newspapers that: (a) are primarily devoted to advertising, and (b) the distribution, insertion or attachment of which is commonly paid for by the advertiser.

Prescription drugs for animals means drugs dispensed in accordance with any order in writing, dated and signed by a practitioner, or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Pre-written computer programs means systems programs or application programs that are not written specifically for the user.

Price or purchase price means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- A. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or
- B. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this State, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or purchase price includes:

- A. The amount of money received or due in cash and credits.
- B. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- C. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- D. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

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- E. Installation, deliver and wheeling-in charges included in the purchase price and not separately stated.
- F. Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- G. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- H. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all materials used, labor and service performed and the profit thereon.
- I. Any consideration valued in money, such as trading stamps, coupons and other media of exchange, and any labor and services rendered in exchange for any tangible personal property and taxable services, as defined herein.

Price or purchase price shall not include:

- A. Any sales or use tax imposed by the State or by any political subdivision hereof.
- B. The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are an allowable adjustment to the purchase price.
- C. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

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

Public means any individual, firm, co-partnership, joint venture, corporation, society, club, league, association, joint stock company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, and the plural as well as the singular number.

Purchase or sale means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed or consumed, but excludes a bona fide gift of property or services.

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These terms include capital leases, installments and credit sales, and property and services acquired by:

- A. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;
- B. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services; the utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;
- C. Performance of taxable services;
- D. Barter or exchange for other property or services including coupons; or
- E. The right of continuous possession or use of tangible personal property as granted under a lease or contract.

The terms *purchase* and *sale* do not include:

- A. A division of partnership assets among the partners according to their interests in the partnership;
- B. The formation of a corporation by the owners of a business and the retransfer of their business assets to the corporation in exchange for all of the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;
- C. The transfer of assets of shareholders in the formation or dissolution of professional corporations;
- D. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
- E. A transfer of a partnership interest;
- F. The transfer in a reorganization qualifying under Section 368(a) (1.) of the "Internal Revenue Code of 1952", as amended, or any successor section on the same subject;
- G. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;
- H. The repossession of personal property by a chattel mortgage holder or foreclosure by a lien holder.
- I. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eight percent (80%) by the parent

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corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

- J. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- K. The transfer of assets between parent and closely held subsidiary corporations, or between 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 Article was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. Any transfer referred to in this paragraph (k) as a transfer to a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eight percent (80%) of the total number of shares of all other classes of stock.

Purchaser or consumer means any person to whom taxable service has been rendered or who shall have leased, rented or purchased at retail, taxable services or tangible personal property which is purchased, delivered, used, stored, distributed or consumed in the Town upon which a tax is imposed hereby.

Resident means for the purposes of the taxation provisions herein, a person who resides or maintains his domicile within the Town or who maintains one (1) or more places of business within the Town at the time of a taxable transaction as defined herein. A person may have dual residency or other places of residence or domicile, or place of business outside the Town prior to, during or after the occurrence of the taxable transaction and be a *resident* according to the terms of this definition.

Retail sale means all sales made within the Town except wholesales sales.

Retailer or vendor means any person selling, leasing or renting tangible personal property or services at retail. Retailer shall include any:

- A. Auctioneer;
- B. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- C. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold

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may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

Return means the sales and use tax reporting form used to report sales and use tax.

Sales tax means the tax to be collected and remitted by a retailer on sales taxes under this Article.

Security system services means electronic security system services. Such term does not include non-electronic security services such as a consulting or human or guard dog patrol services.

Special event means any sales event taking place on a single location for a limited period of time not to exceed three (3) consecutive days and which includes three (3) or more vendors.

Tangible personal property or *personal property* means corporeal personal property, including but not limited to automotive vehicles as herein defined, which may be seen, weighted, measured or felt or touched, or is in any manner perceptible to the senses and for the purpose of the sales tax and where referred to throughout this Code, shall also mean and does include the specific services set out as taxable in Section 160-8.9 of this Code.

Tax means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

Tax deficiency means any amount of tax that is not reported or not paid on or before the due date.

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

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

Telecommunications services means the transmission of any two-way interactive electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. *Telecommunications service* includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. *Telecommunications service* does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted.

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Therapeutic device means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a *therapeutic device* for purposes of this Code.

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

Town Manager means the Town Manager of the Town or any duly authorized agent or representative acting on his or her stead or behalf.

Transient/temporary vendor means any person who engages in a temporary business of selling and delivering goods within the Town, and who, in furtherance of such purpose, leases, uses or occupies any physical space within the Town for the exhibition and sale of such goods for a period of thirty (30) days or less.

Vendor. See *Retailer*.

Wholesale sale means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to non-licensed retailers are not wholesale sales. *Wholesaler* means any person selling to retailers, jobbers, dealers or other wholesalers for resale, and not for storage, use, consumption or distribution.

§ 160-1.2. Exemption; Burden of Proof.

The burden of proving that any retailer is exempt from collecting or paying tax shall be on the retailer under such reasonable requirements of proof as the General Government Director may prescribe.

§ 160-1.3. Deductions and Credits. [Amended 10-25-05, Ord. 05-25]

- A. Deductions from gross sales. If included in reported gross sales, the following are deductible from gross sales:
1. Refunds. The price of admissions, accommodations, tangible personal property or taxable services returned by a purchaser when the price and the tax collected are refunded in cash or by credit.
 2. Bad debts. Taxable sales which are found to be worthless and are actually and properly charged off as bad debts for federal income tax purposes. Any amount so deducted and subsequently collected by the taxpayer shall be subject to the tax.

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3. Interest and finance charges. The amount of interest or finance charges on credit extended in connection with any sale, provided that the interest or finance charges are separately stated from the price.

B. Credits from tax due.

1. Vendor's fee. A retailer's collection and remittance expenses equal to three and one-third percent (3-1/3%) of the sum of the sales tax computed, or, if such amount exceeds three hundred dollars (\$300), then not more than three hundred dollars (\$300), and any excess tax collected may be taken as a credit against tax paid on or before the due date. Such vendor's fee shall be forfeited for any tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Article.
2. Amounts previously paid pursuant to a tax levied by the Town may be credited against the tax due on transactions or items when the present owner or user has previously paid a legally imposed sales tax on the transaction or item computed at the rate established by Section 160-8.6.

§ 160-1.4. Acquisition, Inception or Cessation of Business. [Amended 12-12-06, Ord. 06-36]

A. Purchase of an existing business.

1. Seller's responsibilities. Any person engaged in business in the Town who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business. Such return shall include the payment of all tax due under this Article, including but not limited to the payment of tax on the sale of all assets of the business that constitute a sale of tangible personal property at retail pursuant to section 160-8.9.A of this Article.
2. Purchaser's responsibilities. Any person who purchases an existing business shall be responsible for determining the total tax liability from that business and shall withhold from the initial purchase payment an amount sufficient to cover all such total tax liability, unless the former owner produces a receipt from the Town showing that the total tax liability has been paid or a certificate from the Town that there is no total tax liability.

- #### B. Acquisition of an existing business by means other than purchase.
- Any person who acquires or takes control of an existing business or the assets of an existing business by means other than purchase shall be responsible for payment of any total tax liability from that business.

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- C. Cessation of business. Every person engaged in business in the Town who ceases doing business in the Town shall file a final return. The reporting period for such return shall end on the last day of the business in the Town.

Division 2 Taxpayer's Responsibilities

§ 160-2.1. Retailer Responsible for Collection and Payment of Taxes.

Every retailer engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the specified rate.

- A. Tax added to price. Retailers shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price, or if added, that it or any part thereof shall be refunded.
1. Sales tax may be included in the price of any malt, vinous or spirituous liquor sold by the drink.
 2. Sales tax may be included in the price of items sold from coin operated devices or the price of utilizing such devices.
 3. Sales tax may be included in the price of an admissions charge.
- B. Tax constitutes debt. Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.
- C. Excess tax. No retailer shall retain any tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected and include it in the calculation of tax due.
- D. Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from a tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser may then submit a claim for refund to the Town within sixty (60) days of the date of purchase. Any such tax refunded by the Town will be paid directly to the purchaser.

§ 160-2.2. Trust Status of Tax in Possession of Retailer.

All tax collected by a retailer shall be the property of the Town and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.

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§ 160-2.3. Filing Returns; Due Date.

- A. Every taxpayer shall file a return, whether or not tax is due, and remit any tax due to the Town on or before the twentieth day following the end of the reporting period.
- B. A retailer engaged in business in the Town at two (2) or more locations, whether inside or outside the Town, who collects tax, may file a single return encompassing all locations when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.
- C. For good cause shown in a written request of a taxpayer, the General Government Director may extend the time for making returns and paying any tax due.
- D. No person shall make any false statement in connection with a return.

§ 160-2.4. Reporting Periods.

- A. Unless otherwise required or approved, taxpayers shall file returns and pay taxes as follows:
 - 1. A taxpayer whose monthly tax due to the Town is less than ten dollars (\$10.00) may file returns and pay sales tax annually at the end of the calendar year.
 - 2. A taxpayer who in any month has a monthly tax due to the Town of ten dollars (\$10.00) or more shall file returns and pay tax monthly and continue to pay monthly for each month for the remainder of the calendar year.
- B. The reporting period for a final return shall end on the date of the transfer of ownership of the business, or the last day of business.
- C. The reporting period for a temporary business shall end on the day the temporary location closes or special event concludes.
- D. In order to ensure collection of tax, the General Government Director may require a taxpayer to remit tax and file returns on a more frequent basis than set forth in this Section.
- E. If the accounting methods employed by the taxpayer, or other conditions are such that returns made on a calendar month basis will impose unnecessary hardship, the General Government Director may, upon written request of the taxpayer, accept returns at such intervals as will, in the opinion of the General Government Director, better suit the convenience of the taxpayer, but not jeopardize the collection of the tax.
- F. If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternative method of reporting may be revoked by the General Government Director; immediately

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following notice of such revocation, and the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted.

§ 160-2.5. Duty to Keep Books and Records.

Every person engaged in business in the Town shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which will allow the accurate determination of any tax due.

Division 3 Administration

§ 160-3.1. Authority of the General Government Director.

The administration of this Article is hereby vested in the General Government Director.

- A. Forms and procedures. The General Government Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of the tax not inconsistent with this Article.
- B. Regulations. The General Government Director may formulate and promulgate appropriate regulations to effectuate the purpose of this Article as provided by this Code.
- C. Additional information. The General Government Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment of the tax.
- D. Subpoenas. The General Government Director may issue a subpoena to command a person to attend and give testimony or to produce books, accounts and records.
 1. Any subpoena issued under the terms of this Article shall be served as set forth in the Colorado Rules of Civil Procedure or Municipal Court Rules, including the payment of witness fees. When the witness is subpoenaed at the insistence of the Town, such fees will be paid by the Town. When the witness is subpoenaed at the insistence of the taxpayer, the General Government Director may require that the cost of service of the subpoena and the fee be paid by the taxpayer. In the discretion of the General Government Director, a deposit to cover the cost of the subpoena and witness fees may be required.
 2. If a subpoena issued by the General Government Director is duly served and the respondent fails to attend, give testimony or to produce books, accounts and records as commanded, the General Government Director may request the Town Attorney to file a motion with the Municipal Court of the Town for an order enforcing the subpoena.

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- E. Oaths. The General Government Director is authorized to administer oaths and take testimony at the hearing.
- F. Agents. The General Government Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.
- G. Liquor licenses. Prior to the renewal, transfer or issuance of a license to sell any malt, vinous or spirituous liquor, the General Government Director shall certify that all returns have been filed and taxes paid.
- H. Partial payments. The General Government Director may accept any partial payment made and apply such payments towards the tax due. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated.
- I. Motor vehicle registrations. If the General Government Director determines that a person has registered or caused to be registered a motor vehicle outside the Town and that such motor vehicle should have been registered at an address in the Town, the General Government Director is authorized to assess a civil penalty of five hundred dollars (\$500.00) against the person. A written notice of the penalty assessment shall be issued, paid and protested in the same manner as a notice of assessment. The General Government Director may enforce collection of the penalty assessment in the same manner as provided in this Article for the collection of tax due. Assessment and collection of this penalty shall not preclude the collection of any tax due or fee on the imposition of any other civil or criminal penalty provided by law.
- J. Notices. Notices required by this Article shall be in writing and delivered in person or sent post paid by first class mail, to the last known address of the taxpayer.

§ 160-3.2. Audit of Records.

- A. For the purpose of ascertaining the correct amount of total tax liability from any person engaged in business in the Town, the General Government Director may conduct an audit by examining any relevant books, accounts and records of such person.
- B. All books, accounts and records shall be open at any time during regular business hours for examination by the General Government Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the General Government Director, the General Government Director may issue a subpoena to require that taxpayer or their representative attend a hearing or produce any such books, accounts and records for examination.
- C. Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the General Government Director deems appropriate:

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1. By identifying transactions on which the tax was not properly or accurately collected or paid.
 2. By identifying other irregularities in the calculation of tax due.
 3. By using either of the above methods on a representative sample of the taxpayer's records, and using the results to project the amount of tax deficiency or overpayment, if any.
- D. Any charitable organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in business in the Town.

§ 160-3.3. Tax Information Confidential.

All specific information gained under the provisions of this Article which is used to determine the total tax liability from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.

- A. Except in accordance with judicial order, or as required for administrative proceedings under this Article before an authorized Town or other official, or as otherwise provided by law, the Town Manager, General Government Director and agents, clerks and employees thereof shall not divulge or make known in any way any information disclosed in any document, report or return filed under this Article except such information as is displayed on the tax license.
- B. Nothing contained in this Section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof of a copy of any return or report filed in connection with such person's tax. Copies of such records may be certified by the Town Manager or an agent thereof and when so certified shall be evidence equally with originals and may be received as evidence of their contents.
- C. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the Town Attorney or other legal representatives of the Town.
- D. Notwithstanding the provisions of this Section, the Town Manager may furnish to the taxing official of the State, its political subdivisions, an other state, or political subdivision, or the United States, any information contained in tax returns and related documents filed pursuant to this Article or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the Town Manager to grant similar privileges to the Town and provided further that such information shall be used by the recipient jurisdiction only for tax purposes.

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§ 160-3.4. Timely Payment; Computation of Dates.

- A. Timely payment shall be evidenced by the postmark date if mailed; otherwise timely payment shall be evidenced by the Town's reception date.
- B. Any due date, payment date or deadline for paying the total tax liability or providing information or taking other action, which falls on a Saturday, Sunday or legal holiday recognized by either the federal government, the State or the Town, shall be extended to the first business day following such weekend or holiday.

Division 4 Tax Overpayments

§ 160-4.1. Overpayment from Returns.

If the amount remitted with the return is more than the total tax liability as computed from information in such return, a notice of overpayment will be issued. After examining such notice, the taxpayer may either submit a claim for refund or report the correct total tax liability by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for refund is submitted on or before the thirtieth day after the date of the notice of overpayment.

§ 160-4.2. Tax Overpayment Determined Through Audit.

If the Town ascertains through an audit of a taxpayer's records that the total tax liability is less than the full amount paid, a notice of overpayment will be issued. Such notice will serve as documentation for a claim for refund, if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment.

§ 160-4.3. Refunds of Disputed Tax.

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase.

§ 160-4.4. Claim for Refund.

No tax overpayment shall be refunded unless a claim for refund is signed and submitted to the Town by the taxpayer.

- A. Application. An application for refund of tax shall:
 - 1. Be made on a claim for refund form furnished by the Town;
 - 2. Be signed by the taxpayer; and
 - 3. Include adequate documentation of the claim.

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- B. Decision. The General Government Director shall examine the claim for refund and given written notice to the taxpayer of the amount to be refunded or denied.
- C. Refunds not assignable. The right of any person to obtain a refund pursuant to this Article shall not be assignable.
- D. False statements. No person shall make any false statements in connection with a claim for refund.

Division 5 Tax Deficiencies

§ 160-5.1. Underpayments from Returns.

If the amount remitted with a return is less than the tax computed from information in such return, a notice of assessment shall be issued.

§ 160-5.2. Tax Deficiencies from Failure to File or Failure to Provide Records for Audit.

- A. If any taxpayer neglects or refuses to obtain a retail sales tax license, the amount of the total tax liability shall be estimated, based upon such information as may be available and a notice of assessment shall be issued.
- B. If any taxpayer neglects or refuses to file a return by the due date, the total tax liability shall be estimated, based upon such information as may be available and a notice of assessment shall be issued.
- C. If any taxpayer neglects or refuses to provide adequate books, accounts and records requested for audit, the total tax liability shall be estimated, based upon such information as may be available, and a notice of assessment shall be issued.
- D. Estimated total tax liability shall be adjusted if a return reporting actual total tax liability is filed.

§ 160-5.3. Tax Deficiencies Determined Through Audit.

If the Town ascertains through an audit of the taxpayer's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued.

§ 160-5.4. Penalties.

- A. Penalty for late payment of sales tax. A penalty of fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater, shall be levied on any tax deficiency.

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- B. Penalty for fraud. If any tax deficiency is due to fraud or the intent to evade the tax, the penalty shall be fifty percent (50%) of the total tax deficiency.
- C. Penalty for repeated enforcement. If three (3) notices of assessment have been issued to the same taxpayer within thirty-six (36) consecutive months, a special penalty of fifteen percent (15) of the total tax liability, or twenty five dollars (\$25.00), whichever is greater, shall be levied in addition to the penalties levied in Subsection (a) above.
- D. Abatement of penalty. Any penalty assessed in this Article may be abated by the General Government Director if the General Government Director finds good cause therefore, and the taxpayer submits a written request for such abatement on or before the payment due date of the applicable notice of assessment (or if no assessment was issued, within sixty [60] days after payment of the tax).

§ 160-5.5. Interest.

- A. Interest shall be levied on any tax deficiency at the rate of one and one-half percent (1.5%) per month.
- B. Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.
- C. When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the General Government Director for the period between the interest date of such assessment and the payment date established in an informal meeting or thirty (30) days after the date of a findings of fact, conclusion and decision issued after a hearing.
- D. Any interest properly assessed on a tax deficiency may be abated by the General Government Director as provided above for the abatement of penalties.

§ 160-5.6. Notice of Assessment.

The General Government Director or specified authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.

- A. Notices of assessment shall be in writing and delivered in person or sent post-paid by first class mail to the last known address of the taxpayer.
- B. The payment due date for the total tax liability pursuant to a notice of assessment shall be twenty (20) days after the date of the notice of assessment.

§ 160-5.7. Abatement of Deficiency.

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The General Government Director shall promulgate policies and procedures for processing tax deficiency abatements which shall include a provision that all abatements in excess of five thousand dollars (\$5,000.00) shall require the prior approval of the Town Manager and that all abatements in excess of five hundred dollars (\$500.00) shall be reported to the Town Manager. All tax deficiency abatements shall only be made in accordance with said policies and procedures.

Division 6 Taxpayer's Remedies

§ 160-6.1. Protest of Notice of Assessment or Denial of Refund. [Amended 07-27-10, Ord. 10-10]

- A. Any notice of assessment may be protested by the taxpayer to whom issued.
 - 1. A protest of a notice of assessment issued to a vendor or taxpayer for failure to file a return, for underpayment of tax owed or as a result of an audit shall be submitted in writing to the General Government Director within thirty (30) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.
 - 2. When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the taxpayer fails to pursue the protest in a timely manner.
- B. A protest of a denial of a refund shall be submitted in writing to the General Government Director within thirty (30) calendar days from the date of the denial of the refund and shall identify the amount of the refund requested and the basis for the protest.
- C. Any timely protest entitles a taxpayer to a hearing under the provisions of this Article.

§ 160-6.2. Hearings.

- A. The Town shall commence a hearing within sixty (60) days after the Town's receipt of the taxpayer's written protest; except the Town may extend such period if the delay is requested by the taxpayer. The General Government Director shall notify the taxpayer in writing of the time and place of such hearing.
- B. Every hearing shall be held in the Town before the General Government Director or his or her designated representative.
- C. The taxpayer may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest. The filing of briefs shall not be required.

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- D. Based on the evidence presented at the hearing, the General Government Director or his or her designated representative shall issue a findings of fact, conclusions and decision which may modify or abate the tax, penalties and interest protested at the hearing, approve a refund or uphold the assessment.
- E. After such hearing, the taxpayer shall not be entitled to a second hearing on the same notice of assessment or denial of refund.
- F. Unless the decision of the General Government Director is appealed as provided in this Article, the remaining total tax liability, if any, shall be paid on or before thirty (30) days after the date of the findings of facts, conclusions and decision.

§ 160-6.3. Appeals.

- A. Subsequent to the hearing the taxpayer may appeal the decision of the General Government Director to the County District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- B. An appeal of a final decision of the General Government Director in a hearing held pursuant to this Section shall be commenced within thirty (30) days of such decision.
- C. Upon the appeal to the District Court the taxpayer shall either file with the General Government Director a bond for twice the unpaid amount or deposit the unpaid amount with the General Government Director.

Division 7 Enforcement

§ 160-7.1. Lien for Tax Due.

- A. Issuance. If any tax liability is not paid by the payment date of a notice of assessment, the General Government Director may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the total tax liability, the date of the accrual thereof, the location of the property and shall be certified by the General Government Director.
- B. Filing. The notice of lien shall be filed in the office of the clerk and recorder of any county in the State in which the real or personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.
- C. Priority. The attachment and priority of such lien shall be as follows:
 - 1. Such lien shall be a first prior lien upon the goods, stock in trade and business fixtures owned or used by any taxpayer, including those under lease, installment

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- sale, or other contract agreement, and shall take priority on all property over all other liens or claims of whatsoever kind or nature.
2. Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade and business fixtures shall be a first and prior lien except as pre-existing claims or liens of a bona fide mortgagee, pledge, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.
 3. The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date the lease is recorded with the county clerk and recorder of the county where the property is located or based.
 4. Motor vehicles which are properly registered in the State, showing the Lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has earned reserve, allowance for depreciate not to exceed the fair market value or similar interest which is or may be credited to the lessee.
 5. Where a Lessor and lessee are blood relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such Lessor shall not be considered as bona fide for purpose of this Section.
- D. Enforcement against real property. If a notice of lien is filed against property, the General Government Director may request the Town Attorney to file a civil action in either the Municipal Court or the County District Court to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds accordingly to such findings. Procedures for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

§ 160-7.2. Perpetuance of Lien.

- A. Any lien for total tax liability shall continue until a release of lien is filed by the General Government Director.
- B. Any person who purchases or repossesses real or personal property upon which a lien has been filed by the General Government Director for total tax liability shall be liable for a payment of such tax liability up to the value of the property taken or acquired.

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§ 160-7.3. Release of Lien.

Upon payment of the total tax liability or enforcement of the lien, the General Government Director shall file a release of lien with the county clerk and recorder of the county in which the lien was filed.

§ 160-7.4. Civil Action to Recover Tax Due.

- A. Any unpaid total tax liability shall constitute a debt of the taxpayer to the Town and the General Government Director may request the Town Attorney to file a civil action in either the Municipal Court or the County District Court to collect such total tax liability.
- B. The return filed by a taxpayer or the notice of assessment issued by the General Government Director shall be prima facie proof of the total tax liability.
- C. If a judgment is obtained by the Town, collection of the total tax liability may be made by attachment, garnishment or other means authorized by law. When attachment is sought, no bond shall be required of the General Government Director nor shall any sheriff require of the General Government Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment.

§ 160-7.5. Jeopardy Assessment.

- A. Insurance. If collection of any total tax liability from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the General Government Director may declare the taxable period immediately terminated, determine the total tax liability and issue a jeopardy assessment and demand for payment. Any total tax liability so assessed shall be due and payable immediately.
- B. Security for payment. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the General Government Director.
- C. Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of total tax liability, the taxpayer shall pay the total tax liability as assessed and submit a claim for refund to the Town.

§ 160-7.6. Seizure and Sale.

- A. Unless property is exempt by the Colorado Revised Statute from seizure and sale, the General Government Director may sign and issue a warrant directed to any employee or agent of the Town, or any sheriff of any county in the State, commanding the seizure and sale of personal property of the taxpayer on which a lien has attached for the repayment of the total tax liability.

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1. Such warrant may be issued if the total tax liability is not paid on or before twenty (20) days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.
 2. Such warrant may be issued immediately if a jeopardy assessment and demand for payment have been issued.
- B. If the taxpayer does not volunteer entry to the premises, the General Government Director may apply to the Municipal Court of the Town for a warrant authorizing any employee or agent of the Town to search for and seize property located inside the Town to enforce the collection of total tax liability.
1. The General Government Director shall demonstrate to the court that the premise to which entry is sought contains property that is subject to seizure and sale for total tax liability.
 2. If a jeopardy assessment and demand for payment has been issued, the General Government Director shall specify to the court why collection of the total tax liability will be jeopardized.
 3. The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with Rule 21 of the Colorado Municipal Court Rules of Procedure.
- C. Disposal of seized property.
1. A signed inventory of the property seized shall be made by the Town or its agent. Prior to the sale the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the total tax liability and related expenses incurred to date and the time and place of sale.
 2. A notice of the time and place of sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the country where seizure is made or, in lieu thereof and in the discretion of the General Government Director, the notice shall be posted at the courthouse of the county where seizure is made, and in at least two (2) other places in the county.
 3. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of the seizure. The sale may be postponed by the Town or its agent for no more than ninety (90) days from the date originally fixed for the sale.
 4. The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the Town and the Town shall file a release of lien thereof. If the property is purchased by the

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- Town, such property may be disposed of in the same manner as other Town property.
5. The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the Town or its agent may accept the higher bid.
 6. The property offered for sale may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession pays the total tax liability and all collection costs no less than twenty-four (24) hours before the sale.
 7. The Town or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale and transfer to the purchaser all right, title and interest of he taxpayer in and to the property sold.
 - a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company or association to record the transfer on its books and records.
 - b. When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.
 8. Any surplus remaining after satisfaction of total tax liability plus any costs of making the seizure and advertising the sale may be distributed by the Town first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.
 9. The General Government Director shall submit a written account of the sale to Town Manager.
- D. Exempt property. Property of the taxpayer subject to seizure shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale or other contract arrangement. Property exempt from seizure and sale shall include the personal property described as such in Section 160-7.1.
- E. Return of the property. The taxpayer or any person who claims ownership interest or right of possession in the seized property may petition the Municipal Court, if the property was seized pursuant to a warrant issued by the court, for the return of the property.
1. The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to he Town's interest or that the property is exempt from the Town's lien.
 2. The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines, by a preponderance of

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the evidence, in favor of the taxpayer or other petitioner, the property shall be returned.

§ 160-7.7. Status of Tax Due in Bankruptcy and Receivership.

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or seized for property taxes, the total tax liability under this Article shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee nor other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the General Government Director the amount of such total tax liability before making payment to any judgment creditor or other claimants.

§ 160-7.8. Violations, Summons and Complaint; Penalty.

- A. It shall be a violation of this Article to fail to perform any applicable affirmative duty specified in this Article, including, but not limited to:
1. The failure of any person engaged in business in the Town to obtain a sales tax license, as required by this Article;
 2. The failure of any taxpayer to file a timely return or to make timely payment of any tax liability;
 3. The failure of any resident individual or business to comply with the registration requirements for automotive vehicles;
 4. The making of any false or fraudulent statement by any person in any return, claim for refund or hearing; or
 5. The evasion of collection of any tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.
- B. The General Government Director may direct the issuance of a complaint and summons to appear before the Municipal Court of the Town to any person who the General Government Director reasonably believes has violated any portion of this Article or of the rules and regulations promulgated by the General Government Director to enforce this Article.
- C. Violations of this Article shall be punished by a fine or imprisonment or both, as provided in this Code. Each and every twenty-four-hour continuation of any violation shall constitute a distinct and separate offense.

§ 160-7.9. Statute of Limitations.

Unless the limitation period has been extended as provided in this Section, the statute of limitations for provision contained in this Article shall be as follows:

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A. Refunds.

1. Any claim for refund for disputed total tax liability shall be submitted to the Town on or before sixty (60) days from the date of such purchase.
2. Any claim for refund resulting from a notice of overpayment shall be submitted to the Town on or before thirty (30) days after the date of such notice of overpayment.
3. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the Town.

B. Assessments. No notice of assessment shall be issued more than three (3) years after:

1. The due date of such total tax liability;
2. For a construction project which requires a Town building permit, the date the final certificate of occupancy was issued for such project; or
3. For a construction project not requiring a Town building permit, the date of completion of the project.

C. Liens. No notice of lien shall be issued more than three (3) years after the due date of the total tax liability. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for such extended period.

D. Returns.

1. When a taxpayer fails or refuses to file a return, the total liability may be assessed and collected at any time without limitation.
2. In the case of a false or fraudulent return filed with intent to evade tax, the total tax liability may be assessed, or proceedings for the collection of such total tax liability may be begun at any time without limitation.

E. Protests. No protests of a notice of assessment or denial of a claim for refund shall be valid if submitted to the General Government Director in other than written form, or if submitted after the period allowed in this article.

F. Limitation period extension. The limitation period may be extended only before its expiration, and if:

1. The taxpayer and the General Government Director agree in writing to extend the period; or

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2. The Town provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Article, in which case such period of limitation shall be extended until thirty (30) days after the date of any notice of assessment or overpayment that is issued as a result of such audit. Such notice of audit shall allow only for the audit of the taxpayers records that include reporting periods with due dates which fall within the thirty-six month period preceding the date of the notice of audit, or, if a Town building permit is required, the period between the issuance of such building permit and the issuance of a final certificate of occupancy.

Division 8 General

§ 160-8.1. Legislative Intent.

H.B. 1007 enacted by the Fifty-Fifth Colorado General Assembly and approved by the Governor on June 6, 1985, sets forth the collection of sales and use taxes by home rule cities. This Article contains provisions which are consistent with some of those set forth in H.B. 1007. The Town Council finds that Article XX of the Colorado Constitution grants plenary power to home rule cities to levy and collect taxes within the Town limits. The Town Council does not endorse restrictions on the taxing power of home rule cities. It is the intent of the Town Council in enacting provisions consistent with H.B. 1007 to assist the business community, but not in any way to prejudice the Town's right to fully exercise its constitutional authority to levy and collect taxes within its boundaries.

§ 160-8.2. Sales Tax Licenses; Application and Content.

- A. It shall be unlawful for any person to engage in the business of selling retail within the Town without having first obtained a Town sales tax license.
- B. Persons for whom a license is required shall first submit an application stating the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as may be required by the General Government Director.
- C. Licenses shall be in effect through the end of the period for which they were issued; they shall be conditionally renewed upon renewal of the Town business license and the attendant payment of any and all appropriate Town business occupation taxes and Town sales taxes.
- D. Each sales tax license shall be numbered and shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.
- E. No sales tax license shall be transferable. The new owner shall apply for a new license within thirty (30) days after any sales of a business.

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§ 160-8.3. Sales Tax Licenses; Cancellation.

- A. The General Government Director may cancel any license:
1. Upon receipt of a written notice that the taxpayer is no longer engaged in business in the Town;
 2. Upon the taxpayer's failure to respond to three (3) consecutive notices of delinquency. The General Government Director shall give notice to the taxpayer that the license has been canceled.
 3. After a reasonable notice and a full hearing, the General Government Director may issue a finding and order to cancel the license of any taxpayer found to have violated any provision of this Article.
- B. Appeal. Any person may appeal a finding and order canceling their license to the County District Court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- C. No taxpayer shall continue to engage in business in the Town after their license has been canceled.

§ 160-8.4. Transient/Temporary Vendors. [Amended 12-12-06, Ord. 06-36]

- A. Transient/temporary vendors are subject to and shall comply with the Town business license and shall pay the appropriate Town business occupation taxes as provided for elsewhere in this Code, in addition to obtaining a Town sales tax license as provided in Sections 160-8.2 and 160-8.4.
1. Its provision may not be delivered by a temporary association with another licensed entity unless that entity is a charitable organization based within the Town, or the Town itself, which charitable organization or the Town wishes to sponsor the transient/temporary vendor and thereby exempt the vendor from the provisions of this Section for sales which are infrequently conducted for which the charitable organization collects sales tax due in accordance with the provisions of this Article.
 2. Issuance of a license under this Article does not in any way relieve a transient/temporary vendor from responsibility of obtaining permission from respective property owners to set up displays and sell goods on private property; nor does it relieve such a vendor from paying required fees to charitable organizations which are conducting a special event when the vendor wishes to conduct sales in association with that event.
 3. Transient/temporary vendors will not be issued a sales tax license to sell unless application is received in the General Government Department at

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least twenty-four (24) hours in advance of selling in the Town; the issuance of a sales tax license by the Town does not relieve the application from any of the requirements of the Town business license. The review process required by the Town prior to issuing a business license will require a longer period of time than that required to issue a sales tax license.

- B. Any charitable organization which organizes or sponsors an event where transient/temporary vendors are expected to conduct sales shall be required to distribute to all participation vendors a packet of information furnished by the Town which shall inform said vendors of requirements and procedures to be met before sales in the Town may be conducted.
- C. Tax deposit required. Unless waived or reduced by the General Government Director, transient/temporary vendors shall deposit with the General Government Director a minimum of one hundred dollars (\$100.00), or such greater amount as the General Government Director may direct. The deposit shall be in cash or equivalent acceptable to the General Government Director which can be applied toward any imposed retail sales tax due on sales within the Town limits. Tax returns reflecting actual tax due must be completed within ten (10) days from the final date of sale. In no event shall the vendor be relieved of his or her obligation to remit sales tax due under this Article. The vendor may apply the deposit toward any tax owed. In the event that the signed return is not received by the General Government Director within ten (10) days from the final date of sale, the vendor shall waive the right to apply the deposit to the tax owed, and the deposit shall become nonrefundable.

§ 160-8.5 Special Events Sales Tax License and Collections.

- A. No special event may be conducted without the issuance of a special events license to the organizer of the event. The individual vendors participating in a special event need not individually obtain a license if a special events license has been issued to the organizer of the special event. If there is no special events organizer, the vendors at the special event must obtain their own sales tax license and collect and remit the tax to the Town pursuant to this Article. The organizer shall remit all taxes collected by the vendors who have a license but who elect to have the organizer remit the tax.
- B. No later than ten (10) days after the end of the special event, the special event organizer shall provide the General Government Director with a list of the names and addresses of all vendors of the special event, and a list of all tax license numbers of vendors who have obtained their own licenses for the event and are remitting the tax to the Town independently.
- C. Vendors or organizers of a special event must remit the sales tax they collect pursuant to Section 160-2.1 and complete a tax schedule on a form provided by the Finance Director.

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§ 160-8.6. Sales by Charitable Organizations.

Charitable organizations making taxable sales or performing taxable services as defined in this Article shall collect sales tax and consumers shall pay sales tax on such sales or services, subject to the conditions set forth in this Article.

§ 160-8.7. Rate; Imposition and Collection; Distribution. [Added 02-08-05, Ord. 05-02]

- A. Sales tax. There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 160-8.9 at a rate of two percent (2%).
- B. Imposition and collection. The tax specified in this Section is imposed upon the purchaser. Any seller engaged in business in the Town shall collect the tax and remit it to the Town pursuant to the schedule set forth in this Article.
- C. Distribution. At any time during which the Town shall have bonds outstanding to which all or a portion of the revenues derived from this Article are pledged, the town shall deposit in the Sales and Use Tax Capital Improvement Fund all or such portion of the revenues derived from the tax imposed by this Article as may be required to be placed in such fund by the ordinance of the town authorizing the issuance of such bonds. All revenues derived from this Article that are not required by this subsection to be placed in the Sales and Use Tax Capital Improvement Fund may be deposited in the town's General Fund or Capital Fund or any other fund established by the town to accomplish any lawful purpose. Moneys in the Sales and Use Tax Capital Improvement Fund may be used to pay bonds issued by the town to finance capital improvements in the town.

§ 160-8.8. Map or Location Guide of Town Boundaries. [Amended 12-12-06, Ord. 06-36]

The General Government Director shall make available to any requesting vendor a map or location guide showing the boundaries of the Town. The requesting vendor may rely on such map or location guide 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 a vendor who in good faith complies with the most recent map or location guide.

§ 160-8.9. Transactions and Items Subject to Tax.

The tax levied by Section 160-8.7 shall apply to the following:

- A. All sales of tangible personal property at retail.
- B. Installation in the Town of equipment required to receive or transmit telecommunication service.

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- C. Meals sold to the public or employees.
- D. All sales of food, including but not limited to:
 - 1. The amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carry-out shops, delicatessens, grocery stores, counters, 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.
 - 2. The total amount paid as a cover charge or for admission to an establishment that charges a single price for admission and food service.
 - 3. The amount paid for sales of meals by any of the employees of the aforementioned establishments, whether at full price or at reduced price, shall be included herein.
- E. Gas, electricity, steam, coal, wood, fuel oil or coke furnished for domestic, commercial or industrial consumption.
- F. Pay cable, or subscription television, including charges for service, installation, connection or other similar charge.
- G. Automotive vehicles sold, leased or rented in the Town.
- H. Services of an operator when furnished with the lease or rental of tangible personal property if such services are not separately stated.
- I. Coin-operated devices that dispense tangible personal property.
- J. The rental fee, price or other consideration paid for the rental of any tangible personal property within the boundaries of the Town. Rentals shall include, but not be limited to, ski rentals, car rentals, bicycle rentals, skate rentals, snowboard rentals, other sporting goods rentals, VCR rentals and video cassette tape rentals. Such rentals for all purposes of this Article shall be deemed to be taxable.
- K. Telecommunications services.
- L. Lodging services.

§ 160-8.10. Exemptions from Sales Tax. [Amended 10-25-05, Ord. 05-25; 12-12-06, Ord. 06-36; 01-13-09, Ord. 08-18]

- A. The tax levied by Section 160-8.7 shall not apply to the following:

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1. Automotive vehicles sold to nonresidents of the Town for registration outside the Town.
2. Tangible personal property that is to be used, stored or consumed outside the State by persons residing or doing business outside the State when the property is to be delivered to the purchaser outside the State by mail; by common, contract or commercial carrier that is employed to effect delivery by the vendor; or by the vendor's conveyance.
3. Prosthetic devices and drugs dispensed in accordance with a prescription.
4. All sales of therapeutic devices, appliances or related accessories.
5. All sales of medical supplies.
6. Cigarettes.
7. All direct sales to charitable organizational functions and activities, when billed to and paid for by the charitable organization.
8. All individual sales of twenty-five dollars (\$25.00) or less by charitable organizations in the conduct of events or sales to generate funds for charitable purposes; provided that the sales shall not be conducted for more than three (3) consecutive days or more than nine (9) total days in any calendar year.
9. All direct sales to the United States Government, the State, its departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.
10. All sales which the Town is prohibited from taxing under the Constitution or laws of the United States, or of the State.
11. Tangible personal property sold to a public utility company or railroad doing business both inside and outside the Town, for use in its business operations outside the Town even though delivery thereof is made inside the Town.
12. Motor fuel upon which there has been accrued or paid either the gasoline tax or a special fuel tax, required by Article 27, of Title 39, C.R.S., and which is not subject to refund.
13. All wholesale sales.
14. Tangible personal property sold to a person engaged in manufacturing or processing for sale when the product being manufactured or processed is transformed in fact by the addition of the property, and such property becomes a constituent part of the finished product.
15. Commercial packaging materials.

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16. Napkins, straws or eating utensils sold to a retailer when the following conditions are met:
 - a. The property is used in the consumption of food purchased;
 - b. The cost of the property is included in the price of an item which is sold separately; rather than included in the price of a service; and
 - c. The property is not returnable or intended for reuse.
17. Newsprint and printer's ink for use by publishers, newspapers and commercial printers.
18. Newspapers.
19. Tangible personal property sold for rental or leasing inventory, including but not limited to coin operated devices, provided that such property is not otherwise used except for customer demonstration or display.
20. Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing or fabricating or other processing labor shall not be exempt.
21. Tangible personal property sold through coin-operated devices for a price of twenty-five cents (\$.25) or less.
22. Food purchased with federal food stamps or with funds provided by the special supplemental food program for women, infants and children (42 U.S.C #1786), from retailers who qualify as follows:
 - a. Retail food stores which primarily sell food for home preparation and consumption and in which one (1) or more staple food items make up more than fifty percent (50%) of eligible food sales. These stores shall include: full-line grocery stores; convenience stores; stores which sell meat, poultry or fish; stands which sell agricultural commodities; farmers' markets; milk routes; bread routes; day-old bread stores; bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which are properly licensed to sell food in the State and locality in which they are operating.
 - b. Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than fifty percent (50%) of eligible food sales.
23. Meals purchased with federal food stamps or with funds provided by the special supplemental food program for women, infants and children (42 U.S.C. Section 1786), in the following instances:

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- a. The meals are prepared for and served to residents of federally subsidized housing for the elderly; or are prepared for and served to persons who are sixty (60) years of age or over or who receive supplemental security income benefits, and their spouses, in senior citizens centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that contract with the appropriate agency of the State to offer meals for such persons at concession prices;
 - b. The meals are prepared for and delivered to persons sixty (60) years of age or over and person who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, when such meals are prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate state agency to perform such services at concession prices;
 - c. The meals are prepared for and served to narcotics addicts or alcoholics as part of drug addiction or alcoholic treatment and rehabilitation programs;
 - d. The meals are prepared for and served to disabled or blind recipients of federal financial benefits under the Social Security Act who are residents in a public or private nonprofit group living arrangement that is certified for no more than sixteen (16) residents by the appropriate state agency or agencies under regulations issued under the Social Security Act; or
 - e. The meals are prepared for and served to women and children temporarily residing in public or private nonprofit shelters for battered women and children.
24. Access services.
25. Modified or customized computer programs, but not including pre-written computer programs.
26. Garage sales or yard sales in a residential area, not exceeding a consecutive three-day period nor a total of nine (9) days per calendar year, but not including sales conducted by a professional or compensated agent of the owner of the items to be sold.
27. All sales of feed for livestock.
28. All sales made before July 1, 2014, of wood from salvaged trees killed or infested in Colorado by mountain pine beetles, including but not limited to products such as lumber, furniture built from the salvaged trees, and fire wood, wood chips or wood pellets generated from the salvaged trees. For purposes of this exemption, a wholesaler or retailer shall certify on a form prescribed by the General Government Director that a product is from salvaged trees killed or

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infested in Colorado by mountain pine beetles. This subsection 28 is repealed, effective July 1, 2014.

- B. The list of exemptions shall not be increased by implication or similarity.

§ 160-8.11. Installment Sales Transactions.

Whenever taxable tangible personal property is sold under a conditional sales contract whereby the seller retains title as security for all or part of the price, or whenever the seller take a chattel mortgage on such tangible personal property to secure all or part of the price, the full price of such property shall be reported for the period in which the sale was made. No refund or credit shall be allowed to either party to the transaction in case of repossession.

§ 160-8.12. Nonresident Retailers.

Any retailer engaged in business in the Town, but not maintaining an office in the Town, who sells tangible personal property or taxable services, may petition the General Government Director to establish an alternate method of determining tax due. If the General Government Director finds that the imposition of the tax on an individual sales basis will impose an unnecessary hardship on the retailer, and if the type and occasion of sale so warrants, the General Government Director may establish such alternate method.

§ 160-8.13. Intercity Claims for Recovery.

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

- A. As used herein, *claim for recover* means a claim for reimbursement of sales tax from another jurisdiction.
- B. When it is determined by the Director of General Government of the Town that sales tax owed to the Town has been reported and paid to another taxing jurisdiction, the Town shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.
- C. The Town may make a written claim for recover directly to the municipality that received a tax 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 recover shall include a properly executed release of claim, from the taxpayer and vendor releasing its claim to the taxes paid to the wrong taxing jurisdiction, evidence to substantiate the claim, and a request that the taxing

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jurisdiction approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The taxing jurisdiction to which the Town submits a claim for recover 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.

- D. 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 taxing jurisdiction submitting the claim in writing that the claim is either approved or denied in whole or in part, the Town shall remit the undisputed amount within the thirty (30) days of approval. If a claim is submitted jointly by another taxing jurisdiction 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.
- E. 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.
- F. The period subject to a claim for recovery shall be limited to the thirty-six month period prior to the date the taxing jurisdiction that was wrongly paid receives the claim for recovery.

§ 160-8.14. Effective Date.

This Article shall be effective on and after July 1, 2005. Prior to that date, the provisions of Chapter 160 of the Frisco Town Code in force and effect prior to July 1, 2005 shall apply.

§ 160-8.15 Remittance of Tax – Electronic Database – Retailer Held Harmless. [Added 12-11-07, Ord. 07-20]

- A. Any retailer that collects and remits sales tax to the town as provided in this Article may use an electronic database of state addresses that is certified by the Colorado Department of Revenue pursuant to § 39-26-105.3, C.R.S., as amended, to determine the jurisdictions to which tax is owed.
- B. Any retailer that uses the data contained in an electronic database certified by the Colorado Department of Revenue pursuant to § 39-26-105.3, C.R.S., as amended, to determine the jurisdictions to which tax is owed shall be held harmless for any tax, penalty or interest owed the town that would otherwise be due solely as a result of an error in the electronic database on the date the sale occurred. Each retailer shall keep and preserve such records as may be prescribed by the General Government Director to demonstrate that it used the most current information available in the electronic database on the date that the sale occurred. Notwithstanding the above, if the error in collecting and remitting is the result of a deceptive representation, a false representation, or fraud, the provisions of this section shall not apply.

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ARTICLE II

Real Estate Investment Fee [Adopted 06-06-89, Ord. 89-18¹]

§ 160-10. Title.

This Article shall be known and may be cited as the "Frisco Real Estate Investment Fee Chapter."

§ 160-11. Fee Imposed.

There is hereby imposed a fee on all transfers, whether by deeds or other documents or otherwise, by which lands, tenements or other interests in real property located in the town are sold, granted, assigned, transferred, exchanged or otherwise conveyed to or vested in a purchaser or group of purchasers or any other person or persons, except as may be exempted by § 160 15 of the Article. The investment fee shall be due and payable at the time of transfer of property as specified herein.

§ 160-12. Definitions. [Amended 09-07-99, Ord. 99-14, 10-17-00, Ord. 00-15; 02-27-07, Ord. 07-06; 02-12-08, Ord. 08-05]

As used in this Article, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING UNIT – A residential real property that is subject to the Town's standard form of residential housing restrictive covenant or other deed restriction, covenant, or similar instrument that was established for the purpose of providing a low or moderate priced housing unit for sale to a low or moderate income person; provided, however, that if the residential real property is not subject to the Town's standard form of residential housing restrictive covenant, the property shall qualify as an "affordable housing unit" pursuant to this paragraph only if the Town Manager determines that the other deed restriction, covenant, or similar instrument is substantially similar in its legal effect to the Town's standard form of residential housing restrictive covenant.

CONSIDERATION - The "gross consideration" paid for the real property affected by the transfer shall include actual cash paid, the amount of money equivalent of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be paid or delivered or conveyed, in return for the transfer of ownership or interests in real property, and shall include the amounts of any lien, mortgage, contract indebtedness or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the transfer. "Gross consideration" shall not include the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado or of a municipal or quasi-government corporation or district for taxes, special benefits or improvements.

¹Editor's Note: This ordinance provided that it shall become effective 8-5-89 at 12:01 a.m.

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LOCAL EXEMPTION – An exemption from part of all of the Real Estate Investment Fee for Qualified Purchasers. The following criteria shall be met and the amount of the Local Exemption shall be calculated as follows:

- A. For a Qualified Purchaser who earns less than 80 percent of the Summit County Median Income, the first \$200,000 of the purchase price of the real property.
- B. For a Qualified Purchaser who earns 80-100 percent of the Summit county median Income, the first \$175,000 of the purchase price of the real property.
- C. For a Qualified Purchaser who earns 100-120 percent of the Summit County Median Income, the first \$100,000 of the purchase price of the real property.
- D. Assets cannot exceed \$10,000 (does not include clothing, furnishings, autos, or retirement accounts).

PERSON - Any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

QUALIFIED EMPLOYEE – A person who is employed in Frisco and who (i) works an average of at least 30 hours per week, and (ii) earns no more than 120 percent of the Summit County Median Income. For a permanent employee (either part-time or full-time), the calculation of average hours worked shall be made on an annual basis; for a seasonal employee, such calculation shall be made on a seasonal basis.

QUALIFIED PURCHASER – A person who: (i) is a Qualified Employee or Qualified Resident, (ii) does not hold title to any other residential real property, (iii) does not have in his or her household any other person who holds title to any residential real property, and (iv) has been employed for the previous twelve (12) months or has been a full-time student immediately prior to the purchase of a unit.

QUALIFIED RESIDENT – A person who has lived in the Town of Frisco for at least twelve (12) consecutive months. Residents of Bills Ranch, Giberson Tract, Wiborg Park, Evergreen, Frisco Heights, and Frisco Terrace Subdivisions will also be considered as a qualified resident.

REAL ESTATE INVESTMENT FEE - The fee imposed by this Article on the transfer of real property.

REAL PROPERTY—Real property, as defined by and under the laws of the State of Colorado. (See Section 38-30-150, Colorado Revised Statutes 1973.)

SUMMIT COUNTY MEDIAN INCOME – For purposes of this Section 160, Summit County Median Income shall mean the median income rates established from time to time by the Town, by reference to data compiled by the U.S. Department of Housing and Urban Development, increased by \$20,000 for each category.

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TOWN MANAGER—Includes the Town Manager, the Assistant Town Manager, Town Clerk and any other person designated by the Town Council.

TRANSFER— Includes, whether or not the same is in writing or recorded, any sale, grant assignment, transfer exchange or conveyance of any ownership or title to real property situated in the town.

§ 160-13. Fee to be Remitted to Town.

Each transfer of property as described in § 160-12 above is subject to the real estate investment fee. The real estate investment fee shall be remitted to the town by either the seller or buyer or any person or persons involved with the transaction of said transfer of real property.

§ 160-14. Amount of Fee. [Amended 07-02-91, Ord. 91-14; 02-27-07, Ord. 07-06]

The real estate investment fee payable shall be one percent (1%) of the consideration. The real estate investment fees collected pursuant to this Article shall be expended for recreation and open space unless the council determines from time to time that the funds should be expended on capital projects that benefit the town.

§ 160-15. Exemptions. [Amended 09-07-99, Ord. 99-14; 02-12-08, Ord. 08-05; 08-12-08, Ord. 08-11]

The real estate investment fee imposed by this Article shall not apply to:

- A. Any transfer where there is no consideration or when the consideration is five hundred dollars (\$500.) or less.
- B. Any transfer wherein the United States or any agency of the state, any county, city, municipality, district or other political subdivision of the state is either the grantor or grantee.
- C. A gift of real property, where there is no consideration other than love and affection or a charitable donation.
- D. Any transfer between the same parties creating or terminating a co-ownership in real property. However, if additional consideration or value is paid in connection with such creation or termination, the fee shall apply and be based upon the additional consideration.
- E. The transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution or otherwise.
- F. Transfer made pursuant to reorganization, merger or consolidation of corporations or by a subsidiary to a parent corporation for no consideration other than

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cancellation or surrender of the subsidiary's stock or transfers made to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if that association or organization is owned by the persons by whom such transfer was made, if such owners have the same relative interests in said association or organization as they had in the real property immediately prior to said transfer and there is no consideration other than their respective interests in the new association or organization or transfers made from a corporation, partnership, limited partnership, joint venture, business trust or other association or organization to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if, at the time of transfer, the identities and ownership interests of the persons who own the transferor association or organization are the same as the identities and ownership interests of the persons who own the transferee association or organization, whether or not consideration for the transfer is provided.

- G. Any transfer made pursuant to a confirmed bankruptcy plan or pursuant to an order by a court of competent jurisdiction under the Bankruptcy Code or in an equity receivership proceeding.
- H. Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded: making minor boundary adjustments; removing clouds of titles; or granting rights-of-way, easements or licenses.
- I. Any decree or order of a court of record quieting, determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding.
- J. Any transfer between spouses or former spouses made pursuant to a separation agreement, decree of legal separation or dissolution of marriage.
- K. Any transfer of cemetery lots.
- L. Any lease of real property.
- M. Transfer to secure a debt or other obligation or releases of real property which is security for a debt or other obligation.
- N. Any transfer by deed in lieu of foreclosure if:
 - 1. Such transfer shall be exempt only if the grantee in such deed is the person holding the obligation or instrument which is being canceled, in whole or in part, in exchange for the transfer; and
 - 2. Such transfer shall be exempt only to the extent of the amount of the obligation which is being canceled, in whole or in part, in exchange for the transfer.
- O. Any transfer by sheriff's deed, trustee's deed or other conveyance of real property in connection with an execution sale; foreclosure sale by the public trustee under a

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power of sale; court decree foreclosing a mortgage, deed of trust or other security instrument or court decree of lien foreclosure. provided that:

1. Such transfer shall be exempt only if the grantee is the person holding the obligation or instrument upon which the proceeding is based; and
 2. Such transfer shall be exempt only to the extent of the obligation to be satisfied at the execution or foreclosure sale and any obligations to prior lien holders paid from the sale.
- P. Any executory contract for the sale of real property of less than three (3) years duration under which the purchaser is entitled to or does take possession thereof without acquiring title thereto or any assignment or cancellation of any such contract, provided that the fee imposed by this Article shall be paid when the vendee acquires title to the property.²
- Q. Any transfer to a Qualified Purchaser under the Local Exemption.
- R. Any transfer of an Affordable Housing Unit.

§ 160-16. Application for Exemption.

- A. In the event of any transfer claimed to be exempt from the real estate investment fee herein imposed, the grantor or purchaser may apply for and obtain from the Town Manager a certificate of exemption, which must be affixed to the deed or instrument of transfer prior to the recording of the deed. Any application to certify the exemption shall be filed in the office of the Town Manager no less than three (3) business days prior to the date that the transaction fee is payable to the town. The burden of proving any exemptions shall be in all cases upon the one claiming it. Provided, further, that the exemption provided in §160-15 shall be available only if applied for prior to the date that the investment fee is payable to the town.
- B. Any person whose claim of exemption duly applied for under the provisions of this section is denied by the Town Manager may appeal to the Town Council within thirty (30) days after the denial for a review of the denial of the exemption. Such appeal shall be considered by the Town Council within thirty (30) days of receipt of the same. In the event of a determination by the Town Council favorable to the appellant by a majority of the Council members present, any amount previously paid shall be promptly refunded to the person paying the same plus interest not exceeding four percent (4%) of the amount paid from the date of payment to the date of refund. If a decision is not made by the Town Council within thirty (30) days of the receipt of the appeal, the decision will be deemed favorable to the appellant. The town and the appellant may agree to a continuance of the matter for a period not to exceed six (6) months after the receipt of the appeal.

²Editor's Note: Former Subsections Q and R, as amended, which dealt with transfers made pursuant to a sales contract and which immediately followed this subsection, were repealed 7-2-1991 by Ord. No. 91-14.

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- C. In case of an application for an exemption which is properly applied for but not granted before the transfer takes place, the fee shall be paid as required by this Article. Thereafter, if the exemption shall be allowed, upon application to the Town Manager, the person who has paid said fees shall be entitled to a refund.

§ 160-17. Applicability of Fee.

The fee imposed under authority of this Article shall be computed only with respect to real property located within the town, and the fee shall be assessed based on that part of the consideration attributable to such real property located within the town.

§ 160-18. Enforcement.

- A. The Town Manager is charged with the enforcement of the provisions of this chapter and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining to thereto.
- B. At the time of any transfer upon which a fee is imposed or which is claimed to be exempt under this Article, there shall be made a report to the Town Manager on forms prescribed by him, setting forth the true, complete and actual consideration for the transfer, the name of the parties thereto. The location of the real property transferred. The basis of the claimed exemption and such other information as he may require.
- C. For the purpose of collection of the fees imposed by this Article, all banks, title companies, escrow companies, building and loan Institutions, attorneys, real estate agencies or other closing agents or agencies permitted as such to do business under the laws of the State of Colorado may collect the real estate investment fee (holding said funds in trust for the town) and remit the same to the town for and or behalf of the purchaser forthwith. Said funds shall not be commingled with other funds of the collector.

§ 160-19. Due Dates; Delinquencies; Penalties Interest; Evasion. [Amended 12-12-06, Ord. 06-36]

- A. The fee imposed under this Article is due and payable at the time of the transfer and is delinquent if it remains unpaid for thirty (30) days thereafter. In the event that the fee is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of fee shall accrue for each thirty-day period during which the fee has not been paid. In the event that a portion of the fee is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent. Interest shall accrue at the rate of one and five-tenths percent (1.5%) per month, or a fraction thereof, on the amount of fee, exclusive of penalties, from the date the fee becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the fee.

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- B. Any person liable for a real estate investment fee upon a transfer who shall cause the deed, instrument of conveyance or document evidencing said transfer to be filed of record in the office of the Summit County Clerk and Recorder or who shall attempt to so record any such document before the real estate investment fee and all penalties and interest thereon have been paid in full shall be in violation of this Article.
- C. Violations; evasion of collection or payment of tax. It shall be a violation of this Article for any person to make any false or fraudulent return or remittance, to make any false statement in connection with any remittance or in connection with any application for an exemption or in any manner to evade the collection or payment of the tax, or any part thereof, imposed by this Article. It shall be a violation of this Article for any person to aid or abet any other person in any attempt to evade the collection or payment of the tax, or any part thereof imposed by this Article.

§ 160-20. Fee to Become Lien.

- A. The fee imposed by this Article, and any penalty and interest due thereon, if not paid when due, and all costs of collection of said fee, penalty and interest, shall constitute a perpetual lien on the real property transferred in the amount applicable to each lot or parcel of real property transferred and shall have priority over all other liens except general tax liens and special improvement district assessment liens. Except as mentioned, the lien for said fee shall be and until paid shall remain a first and prior lien superior to all other liens upon said property and shall take precedence on such property over other liens or claims of whatsoever kind or nature. Said lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.
- B. The recording of this Article in the office of the Clerk and Recorder of the County of Summit, State of Colorado, shall constitute notice to all persons interested in the transfer of real property of the existence of and the lien imposed by the real estate investment fee.
- C. If the fee is unpaid and delinquent, the Town Manager shall cause written notification to the purchaser or person to whom the transfer is made at the address shown on any deed or instrument evidencing the transfer, or their last known address, of said delinquency. Said notification shall be mailed certified or registered mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the fee, penalty and interest are not paid within thirty (30) days of the effective date of the notification, the Town Manager shall commence foreclosure of the lien for said fee in the same manner as the foreclosure of a mortgage in accordance with Colorado law.
- D. The amount of the fee, penalty and interest imposed under the provisions of this Article shall be deemed a debt to the town. Any person owing money to the town under the provisions of this Article shall be liable to an action brought in the name of the town for the recovery of such amount.

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- E. Any person who violates this Article may be punished by a fine not exceeding three hundred dollars (\$300) or imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.
- F. Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

§ 160-21. Report to be Prepared.

The Town Manager shall cause to be prepared a report of the receipts from the real estate investment fee, expenditures made in the preceding fiscal year. Funds into which the proceeds have been disposition of those funds, the projected revenue and expenditures for the next fiscal year.

ARTICLE III Utility Tax [Adopted 10-15-91, Ord. 91-21]

§ 160-22. Construal of Provisions.

The tax levied herein is upon occupations and businesses in the performance of local functions and shall not be construed as a franchise.

§ 160-23. Telephone Utility Tax.

There is effective January 1, 1992, levied on and against all telephone utility companies maintaining facilities and carrying on functions and operations within the town, a tax on the occupation and business of maintaining a telephone exchange and lines and supplying telephone service to the inhabitants of the town. Telephone utility companies shall include interstate telephone service provided by independent interstate providers who purchase use of local phone networks to originate or complete their interstate calls in the Town of Frisco.

- A. Amount. The amount of such tax shall be one thousand dollars (\$1,000) per year, plus five dollars (\$5) per telephone account for which local exchange telephone service is provided within the corporate limits of the Town of Frisco.
- B. Mode of payment. Said taxes shall be due and payable in four (4) quarterly installments paid on the last business day of the months of March, June, September and December.
- C. Reporting. Thirty (30) days after the date on which the tax begins to accrue, each telephone utility company shall file with the Town Clerk a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the town on said date.

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- D. Failure to pay. If any telephone utility company subject to the provisions of this section shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same, together with an additional twelve percent (12%) of the amount of taxes due, shall be and hereby is declared to be a debt due and owing from such company to the town.
- E. Inspection. The town shall have the right at reasonable times to examine the books and records of the telephone utility companies which are subject to the provisions of this section and to make copies of the entries or contents thereof.
- F. Exemption. The tax herein provided shall be in lieu of all other occupation taxes on the privilege of doing business in the Town of Frisco.

§ 160-24. Violations and Penalties.

If any officer, agent or manager of a utility company which is subject to the provisions of this Article shall fail, neglect or refuse to pay any tax levied by this Article in the manner herein prescribed, said officer, agent, manager or person shall, on conviction thereof, be subject to such penalties as are provided in the Chapter 1, General Provisions, Article I, of the Town of Frisco Code.

§ 160-25. Severability.

If any part of this Article shall be held unconstitutional or invalid, the remainder of this Article shall continue in full force and effect, it being the legislative intent that this Article would have been adopted even if such unconstitutional or invalid matter had not been included herein.

ARTICLE IV **LODGING TAX** [Added 01-01-04, Ord. 03-17]

§ 160-26. Short Title.

The ordinance codified in this Article shall be known as the Lodging Tax Ordinance.

§ 160-27. Legislative Intent.

The Town of Frisco hereby finds and declares that the creation of town capital improvements and amenities that will enhance the viability of the town as a premier destination resort is of primary importance in maintaining the community identity, environmental desirability and economic health of the town. The Town of Frisco further finds that it is appropriate to fund amenities to be used by tourists, and that will promote tourism within the town, by revenue generated by activities enjoyed by tourists and citizens in the town. It is therefore necessary and appropriate to impose a tax on lodging in the town in order to preserve, promote and enhance the community identity, environmental desirability and economic health of the town. It is therefore declared to be the legislative intent of the Town of Frisco that every person who purchases lodging in the town is exercising a taxable privilege, and shall pay the tax imposed by this

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Article. It is further declared that every person who sells lodging in the town shall collect the tax imposed by this Article.

§ 160-28. Definitions.

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

GROSS LODGING SALES means the total received in money, credit, property or other consideration valued in money for all sales and purchases of lodging, that are subject to the tax imposed by this Article.

LODGING means the transaction of furnishing a room or other accommodation by any person to another person who, for consideration, whether or not paid in cash, uses, possesses, or has the right to use or possess any room or other accommodation in a hotel, apartment hotel, town home, condominium building, time share building, lodging house, motor hotel, guest house, bed and breakfast residence, guest ranch, mobile home, auto camp, trailer court, or trailer park in the town under any agreement, concession, permit, right of access, license or otherwise. This definition shall not apply to the transaction of furnishing rooms for meetings or exhibitions.

MANAGER means the manager of the town; "manager" shall also include such person's designee.

PERSON means any individual, firm, limited liability company, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee, or any person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any group or combination acting as a unit.

PURCHASE OR SALE means the acquisition for consideration by any person of lodging.

PURCHASER means any person who has purchased lodging or to whom lodging has been sold.

TAX means the lodging tax payable by the purchaser or due from a vendor.

TAXPAYER means any person obligated to collect and/or pay lodging tax under this Article.

TOWN means the Town of Frisco, Colorado.

TREASURER means the treasurer of the town; "treasurer" shall also include such person's designee.

VENDOR means any person selling lodging.

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§ 160-29. License Required.

Every person with a duty to collect the tax imposed in this Article shall obtain a business license pursuant to Article I of Chapter 110 of the Frisco Code.

§ 160-30. Imposition of the Tax.

- A. Effective January 1, 2004, there is hereby levied a tax in the amount of 2.35% of the purchase price paid or charged for lodging within the town.
- B. In all cases, the purchase price paid or charged shall exclude the sale of any goods, services, or commodities other than lodging and otherwise taxed under Article I of this Chapter.

§ 160-31. Exemptions.

The following sales and purchases are exempt from the tax imposed by this Article:

- A. All sales to any person who is, in fact, a resident of, and who enters into or has entered into, a written agreement for lodging for a period of at least 30 consecutive days.
- B. All sales to the United States Government and to the State, their departments or institutions and the political subdivisions thereof, including the town and its departments, in their governmental capacities only.
- C. Religious, charitable, and quasi-governmental organizations, but only in the conduct of their regular religious, charitable and quasi-governmental capacities and only if such organization has obtained an exempt organization license and furnishes the exempt tax license to the person who sells lodging to the organization.

§ 160-32. Receipts; Disposition. [Amended 01-24-06, Ord. 06-01]

- A. The monies received by the treasurer from the tax imposed and collected pursuant to this Article shall be deposited in the general fund, the capital improvements fund, or such other fund as the Town Council may from time to time determine, and shall be used specifically for economic development, special events, advertising and marketing, recreation amenities, multi-purpose facilities, open space, and similar uses, including operation and maintenance thereof, the decision as to the proportion of revenue to be allocated to any such uses being made by ordinance of the Town Council.
- B. For the year 2006 and future years:

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1. 25% for advertising and marketing in the form of funding of the Frisco Information Center.
2. 15% for economic development.
3. 50% for recreational amenities, multi-purpose facilities, and/or open space.
4. 10% for operation and maintenance of recreation amenities, multi-purpose facilities, and/or tourism-related operation and maintenance expenses.

Actual expenditures, reserves for future capital expenditures, and other allocations of the proceeds from the tax on lodging shall be accomplished by the Town Council through the budget process, in accordance with the percentages stated in this Subsection B.

§ 160-33. Authorization for Collection, etc. of Lodging Tax Revenues.

The registered electors of the Town of Frisco hereby authorize the revenue change caused by the collection, retention and expenditure of all tax revenues generated by the passage of this Article, notwithstanding the limitations of Article X, Section 20 of the Colorado Constitution or any other law, such collection, retention or expenditure being outside of and apart from any other expenditure of the town that may be so limited. Expenditures of tax revenues generated by the passage of this Article shall not be counted in the base or in the increment for purposes of any such expenditure limitation. If this provision shall be declared invalid for any reason, it shall be severed from this Article, and pro rata adjustments shall be made to all funds to avoid any distortion of spending limits by virtue of the dedications of revenue set forth herein.

§ 160-34. Collection of Tax.

- A. Every vendor making taxable sales of lodging to purchasers in the town is required to collect the tax imposed by this Article from such purchasers at the time such sales are made.
- B. The tax required to be collected by this section shall be stated and charged separately from the purchase price on any record made at the time of the sale or at such later time when evidence of the sale is issued by the vendor. When added, such tax shall constitute part of the purchase price and shall be a debt from the purchaser to the vendor until paid, which shall be recoverable at law by the vendor in the same manner as other debts.
- C. All taxes paid by the purchaser to the vendor under this Article shall remain the property of the town, to be held in trust by the vendor for the sole use and benefit of the town until remitted to the treasurer.
- D. Taxes paid on the amount of gross lodging sales that are represented by accounts found to be worthless and that are lawfully charged off as bad debts by the vendor for federal and state income tax purposes may be credited upon a

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subsequent payment of tax as provided for in this Article; provided, however, that if any such accounts are thereafter collected by the vendor, a tax shall be paid to the town upon the amount so collected.

§ 160-35. Vendor Responsible for Payment of Tax.

- A. Every vendor shall be liable and responsible to the town for the monthly payment of an amount equivalent to 2.35% of all such vendor's gross lodging sales, plus any tax collected by such vendor in excess of this amount.
- B. Prior to the twentieth day of each month, every vendor shall make a return to the treasurer of the preceding calendar month and shall remit to the treasurer simultaneously therewith the total amount of tax due and owing to the town as provided by this section. Each monthly return shall be made in such manner and upon such forms as the treasurer may prescribe.
- C. If the accounting methods regularly employed by the vendor are such that monthly returns will impose an unnecessary hardship upon such vendor, the treasurer, upon written request of the vendor, may accept returns at intervals that, in the treasurer's opinion, are more convenient for the vendor and that do not jeopardize collection of the tax; provided, however, that the treasurer may, by rule, permit a vendor who collects less than \$150.00 tax per month to make returns and pay tax at intervals not greater than three months.

§ 160-36. Excess Tax; Remittance.

If any vendor, during any reporting period, collects as a tax an amount in excess of 2.35% of its total gross lodging sales, then it shall remit to the treasurer the full net amount of the tax imposed in this Article and also such excess amount. The retention by the vendor of any excess amount of tax collections over the 2.35% of the total gross lodging sales of such vendor or the intentional failure to remit punctually to the treasurer the full amount required to be remitted by the provisions of this Article is declared to be a violation of this Article and shall be recovered, together with interest, penalties and costs, as provided in § 160-45.

§ 160-37. Liability for Tax.

- A. It is unlawful for any purchaser to fail to pay, or for any vendor to fail to collect, the tax levied by this Article.
- B. It is unlawful for any vendor to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article shall be assumed or absorbed by the vendor or that it shall not be added to the selling price of the lodging or, if added, that it or any part thereof shall be refunded.

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- C. The burden of proving that any transaction is not subject to the tax imposed by this Article shall be upon the person upon whom the duty to collect the tax is imposed.

§ 160-38. Tax Additional.

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

§ 160-39. Map or Location Guide of Town Boundaries.

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

§ 160-40. Audit by Treasurer; Duty to Keep Records.

- A. For the purpose of ascertaining general compliance with this Article, it shall be the duty of the treasurer to conduct periodic audits of taxpayers within the town. In conducting any such audit, or for the purpose of determining the correctness of a return or the amount of tax due from any taxpayer, the treasurer may investigate concerning any matters covered by this Article and in the course thereof may examine any relevant books, papers, records or memoranda of any taxpayer, and may require the attendance of such taxpayer, or of any person having knowledge, as may be necessary properly to ascertain any tax liability.
- B. It is the duty of every taxpayer to keep and preserve suitable records and such other books or accounts as may be necessary to determine the amount of tax for the collection of which it is liable under this Article. It is the duty of every such taxpayer to keep and preserve for a period of three years all records relating to the sale of lodging.
- C. All such books, invoices, and other records shall be open for examination and audit at any time by the treasurer or his/her duly authorized agent. The taxpayer shall produce all such records, if required by the treasurer, at either the taxpayer's place of business or the Frisco Town Hall. The taxpayer may elect to pay the expenses involved with an audit conducted at a location outside the town if it is not possible for the taxpayer to provide the necessary records within the town.
- D. If a taxpayer cannot produce records suitable, in the judgment of treasurer, to support its actual lodging tax liability, the treasurer may establish such liability by use of generally accepted accounting principles including the making of estimates. Furthermore, when suitable records are available, but in the

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judgment of the treasurer, are so voluminous that excessive and undue time would be required to conduct an actual audit thereof, the treasurer may use a test-audit or other appropriate sampling technique to compute the lodging tax liability.

§ 160-41. Consolidation of Returns.

Upon written notice to the treasurer, a vendor doing business in two or more places or locations within the town, and collecting taxes under this Article, may file one return covering all such places or locations. Such return shall be accompanied by a supplemental report showing the gross and net taxable sales and taxes collected thereon for each place or location.

§ 160-42. Confidential Nature of Returns.

- A. Except in accordance with judicial order or as otherwise provided herein the treasurer and his/her agents, clerks and employees shall not divulge any information gained from any return filed or any investigation or hearing held under the provisions of this Article.
- B. The town officials charged with the custody of returns filed pursuant to this Article shall not be required to produce such returns or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the treasurer or town in an action under the provisions of this Article to which the treasurer or town is a party, or on behalf of any party to an action or proceeding under the provisions of this Article, or to punish a violator thereof, or pursuant to any judicial order, in which event the court may require the production and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.
- C. No provision of this section shall be construed to prohibit the delivery to a taxpayer or to its duly authorized representative of a copy of any return or report filed in connection with its tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the information contained therein, nor to prohibit the inspection by the town attorney or any other legal representative of the town of the report or the return of any taxpayer who shall bring an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this Article.
- D. The provisions of this section shall not preclude the manager, the treasurer, and their agents, clerks and employees, from divulging any information gained from any return or audit to the federal government, the State of Colorado, the Department of Revenue, the town or any other municipality, the town attorney, the manager, or the treasurer, nor shall the manager, the treasurer, and their agents, clerks or employees, be liable to any person for such disclosure made for the purpose of computing or collecting the tax due and owing from any

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person or for the purpose of verifying compliance with this Article or for the purpose of investigating any criminal or illegal activity.

- E. Any town officer or employee, or any agent thereof, who shall divulge any information classified by this Article as confidential in any manner except in accordance with proper judicial order or as otherwise provided herein or by other law shall be guilty of a violation of this Article and shall be punished in the manner provided by § 1-14 of this Code.

§ 160-43. Statute of Limitations.

The tax for any period, together with interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed, nor shall any notice of lien be filed, or 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 case such lien shall continue on for one year after the filing of notice thereof. The statute of limitation period as set forth in this section shall not apply if:

- A. A taxpayer files a false or fraudulent return with the intent to evade the tax imposed by this Article; or
- B. If a taxpayer fails to file a return as required by § 160-35.

In the case of a failure to file a return, or of a false or fraudulent return with the intent to evade the tax imposed by this Article, the tax together with interest and penalties thereon may be assessed, and/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 treasurer may agree in writing to an extension thereof, and the period so agreed upon may be extended by subsequent agreements in writing.

§ 160-44. Refunds.

Refunds shall be made, or a credit allowed, for the lodging tax so paid under dispute by any purchaser or user who claims an exemption pursuant to § 160-31. Such refund shall be made by the treasurer after compliance with the following conditions precedent:

- A. Applications for refund shall be made within 60 days after the purchase of lodging whereon an exemption is claimed and must be supported by the affidavit of the purchaser or user accompanied by the original paid invoice or receipt and certificate issued by the vendor and shall be made upon such forms as shall be prescribed therefore.
- B. A refund shall be made or a credit allowed by the treasurer to any person entitled to an exemption where such person establishes that:

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1. A tax was paid by another person, the purchaser, on a purchase made on behalf of the person entitled to an exemption;
2. A refund has not been granted to such purchaser; and
3. The person entitled to the exemption paid or reimbursed such purchaser for such tax.

The burden of proving that the lodging on which tax refunds are claimed are exempt from taxation under this Article shall be on the person making such claim under such reasonable requirements of proof as are customarily required in administrative hearings. No such refund shall be made or credit allowed in an amount greater than the tax paid.

- C. Claims for tax monies paid in error or by mistake shall be made within three years after the date of purchase of lodging for which the refund is claimed and shall be processed for refund in accordance with this section, except that the proceeds of any such claim for a refund shall first be applied by the treasurer to any tax deficiencies or liabilities existing against the claimant before allowance of such claim by the treasurer, and further except that if such excess payment of tax monies in any period is discovered as a result of an audit by the treasurer, and deficiencies are discovered and assessed against the taxpayer as a result of such audit, then such excess monies shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.
- D. Upon receipt of an application, the treasurer shall examine the same with due speed and shall give notice to the applicant by order in writing of his/her decision thereon. An aggrieved applicant, within 20 days after such decision is mailed to it, may petition the treasurer for a hearing on the claim in the manner provided in § 160-48 and may appeal in the manner provided in § 160-49. The right of any person to a refund under this Article shall not be assignable, and except as provided in Subsection B of this section, such application for refund must be made by the same person who purchased the lodging and paid the tax thereon as shown in the invoice of the sale thereof.
- E. Any applicant for a refund under the provisions of this or any other person who makes any false statement in connection with an application for a refund of any taxes is guilty of a violation of this Article and shall be punished in the manner provided by § 1-14 of this Code. If any person is convicted under the provisions of this section, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the treasurer is empowered to bring appropriate recovery of such refunds. A brief summary statement of the above described penalty shall be printed on each form application for a refund.

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§ 160-45. Recovery of Taxes, Penalty and Interest. [Amended 01-24-06, Ord. 06-01]

- A. All sums of money paid by the purchaser to the vendor as taxes imposed by this Article shall be and remain public money, the property of the town, in the hands of such vendor, and such vendor shall hold the same in trust for the sole use and benefit of the town until paid to the treasurer, and for failure so to pay to the treasurer, such vendor shall be punished as provided herein.
- B. Failure to file return.
 - 1. If a person neglects or refuses to make a return in payment of the lodging tax as required by this Article, then the treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater, and interest on such delinquent taxes at the rate of one and one-half percent (1.5%) per month, with such interest being calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. Any part of the foregoing notwithstanding, if any tax deficiency is due to fraud or an intent to evade the tax, the penalty shall be fifty percent (50%) of the total tax deficiency.
 - 2. Promptly thereafter, the treasurer 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 treasurer. Such estimate shall thereupon become a notice of deficiency. Within 20 days after the notice of deficiency is mailed, the taxpayer may petition the manager for a hearing in the manner provided in § 160-48 and may appeal as provided in § 160-49.
- C. Action for recovery.
 - 1. In addition to the creation of a tax lien as provided in § 160-46, the treasurer may also treat any such taxes, penalties or interest due or unpaid as a debt due the town from the vendor. The return of the taxpayer or the assessment made by the treasurer, as provided in this Article, shall be prima facie proof of the amount due.
 - 2. To recover such taxes, penalties or interest due, the treasurer may bring an action in attachment, and a writ of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the treasurer, nor shall any sheriff require of the treasurer an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The treasurer may prosecute appeals in such cases without the necessity of providing bond thereof. It is the duty of the town attorney, when requested by the treasurer, to commence action for the

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

- D. 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 an adjudication or determination of its lien upon the property involved therein.
- E. The treasurer is authorized to waive, for good cause shown, any penalty assessed as provided in this Article, and any interest imposed in excess of 10% per annum shall be deemed a penalty.
- F. If a taxpayer pays for any tax imposed pursuant to this Article by check for which there are insufficient funds to cover such check, then the treasurer may assess a penalty against such taxpayer as follows:
 - 1. \$20.00 for the first violation;
 - 2. \$30.00 for the second violation; and
 - 3. \$50.00 for each additional violation.

If a penalty of \$30.00 or more has been assessed against a taxpayer by the treasurer, then the treasurer may require such taxpayer to pay all tax payments, whether due or to be due in the future, by certified funds, cashier's check or cash. The penalty imposed by this Subsection G is in addition to all other penalties imposed pursuant to this Article.

- G. The treasurer may issue summons and complaints for violations of this Article as set forth in the Frisco Code.

§ 160-46. Tax Lien; Exemption from Lien.

- A. Notice of tax lien.
 - 1. If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five days after the same are due, then the treasurer 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 have attached prior to the filing of the notice as provided in this section on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

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2. Said notice shall be on forms furnished by the treasurer and shall be verified by the manager, by the treasurer or any duly qualified agent of the manager or the treasurer, whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in the county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice shall have been filed or not, the treasurer may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of the county, commanding him to levy upon, seize, and sell sufficient of the real and personal property of the amount due together with interest, penalties and costs, as may be provided by law, subject to valid pre-existing claims or liens.
 3. Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer or any property used by such taxpayer in conducting its lodging business, except property made exempt from the tax lien pursuant to the provisions of Subsection (C)(1) hereof 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 with respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The sheriff shall receive such fees in executing such warrants as are allowed by law for similar services.
 4. Any lien for taxes as shown on the records of the county clerk and recorder as provided in this section, upon payment of all taxes, penalties and interest covered thereby, shall be released by the treasurer in the same manner as mortgages and judgments are released.
- B. Leased property.
1. The lodging tax imposed pursuant to § 160-30 shall be a first and prior lien upon the tangible personal property and business fixtures of or used by any vendor under lease, title retaining contract, or other contract arrangement, except in 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.
 2. The real or personal property of an owner who has made a bona fide lease to a vendor or to any taxpayer owing a lodging tax shall be exempt from the lien created in Subsection A (1) if such property can reasonably be identified from the lease description, and if the lessee is given no right to become the owner of the leased property. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or based or if a memorandum of the lease is filed with the treasurer within 10 days after the execution of the lease.

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3. Any vendor who is in possession of property under the terms of a lease, which property is exempt from the tax lien as provided in this Section, may be required by the treasurer to remit taxes collected at more frequent intervals than monthly, but no more frequently than semi-monthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.
- C. Sale of business.
1. Any vendor who sells out its business or quits business shall be required to make out the return as provided in this Article within 10 days after the date it sold its business or quit business, and its 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 produces a receipt from the treasurer showing that the taxes have been paid or a certificate that no taxes are due.
 2. If the purchaser of a lodging business fails to withhold the purchase money as provided in Subsection B(1), and the taxes are due and unpaid after the 10-day period allowed, the purchaser, as well as the former owner, shall be personally responsible for the payment of the taxes unpaid by the former owner.
- D. Whenever the business or property of any taxpayer subject to this Article shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this Article and for which said vendor is in any way liable under the terms of this Article 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 § 160-45 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 Article under process or order of any court without first ascertaining from the treasurer the amount of any taxes due and payable under this Article, and if there are any such taxes due, owing or unpaid, it is the duty of such officer first to pay the amount of said taxes out of the proceeds of said sale before making payment of any monies 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 provided in this section.

§ 160-47. Tax Deficiency. [Amended 01-24-06, Ord. 06-01]

If a deficiency in payment of the lodging tax occurs without intent to defraud, there shall be added fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater, and interest on such delinquent taxes at the rate of one and one-half percent (1.5%) per month, with such interest being calculated for each month or portion of a

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month from the due date that a tax deficiency remains unpaid, from the person required to file the return, which interest and addition shall become due and payable 20 days after written notice and demand to such person by the treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency and interest on such delinquent taxes at the rate of one and one-half percent (1.5%) per month, with such interest being calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid, from the person required to file the return, which interest and addition shall become due and payable 20 days after written notice and demand by the treasurer.

§ 160-48. Hearings by Manager.

- A. If any person contests any deficiency notice, assessment or denial of refund received from the treasurer, then he/she may apply to the manager by petition in writing within 20 days after such deficiency notice or denial of refund is mailed to him/her for a hearing and a correction of the amount of the tax so assessed or refund requested, in which petition he/she shall set forth the reasons supporting the amount by which such tax should be reduced or the amount of the refund requested should be granted.
- B. The manager shall notify the taxpayer or petitioner in writing of the time and place fixed by him/her for such hearing. A tape recording or written transcript shall be made of any such hearing. The manager shall have power to administer oaths to any person in the course of such hearing. Production of documents and attendance of witnesses shall be requested by the manager on his/her own motion or on motion of any party. Any request for production or attendance shall inform persons that compliance is voluntary but that, if the request is not complied with, the manager may apply to the municipal judge for issuance of a subpoena. The manager may establish additional procedures for such hearings in accordance with § 160-51 hereof. After such hearing, the manager shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the taxpayer or petitioner.
- C. The manager may appoint another hearing officer to hear the petition. The appointed hearing officer shall have all of the powers of the manager in conducting the hearing. Following the hearing, the hearing officer shall render a proposed decision, in writing, and forward it to the manager. The manager shall consider the proposed decision in rendering a final decision as provided in Subsection B hereof.
- D. The municipal judge of the town, upon application of the manager, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the manager or any of his/her duly authorized agents, by the issuance and enforcement of subpoenas in the same manner as production of evidence may be compelled before the court.

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- E. Every decision of the manager shall be in writing, and notice thereof shall be mailed to the petitioner within 20 days after such hearing, and all such decisions shall become final and all amounts due shall be paid upon the expiration of 30 days after notice of such decision shall have been mailed to the petitioner, unless proceedings are begun within such time for review thereof as provided in § 160-49.

§ 160-49. Review by Court.

If the petitioner or if an applicant for a refund is aggrieved at the final decision of the manager, then he/she may proceed to have same reviewed in accordance with Colorado Rule of Civil Procedure 106(a)(4).

§ 160-50. Other Remedies.

No provision of this Article shall preclude the town from utilizing any other lawful penalties or other remedies applicable to the collection of lodging taxes. The treasurer shall have the authority to make a compromised settlement of any claim for lodging tax due under this Article.

§ 160-51. Administration.

The manager may adopt rules and regulations in conformity with this Article for the proper administration and enforcement of this Article. The administration of this Article is vested in and shall be exercised by the manager.

§ 160-52. Council Empowered to Amend, Repeal and/or Revise.

The Town Council is authorized to change the lodging tax rate imposed by this Article, so long as the rate does not exceed 2.35%, and otherwise to amend or repeal any other part of this Article including but not limited to additional provisions for enforcement and collection of the lodging tax. Such change of tax rate, amendment or repeal need not be submitted to the electors of the town for their approval.