



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: LESLIE EDWARDS, FINANCE DIRECTOR
SOLE DRUMWRIGHT, REVENUE SPECIALIST
RE: TAX CODE AMENDMENTS
DATE: DECEMBER 13, 2022

Summary and Background: This memo details changes proposed to the Town of Frisco Sales Tax, Lodging Tax, and Short Term Rental sections of the Municipal Code. This need occurs from time to time in order to “catch up” with new legislation, technology, and other nuances that have come to light since the code was last updated. Staff has reviewed the State of Colorado statutes, as well as those of other municipalities with tax policies that mirror those of the Town of Frisco. The intent of these revisions is to update our code to provide clarification on current policy and add practical exemptions to the code. Some items of note that have been proposed for sales tax exemption at the State level are diapers, feminine hygiene products, retail delivery fee, and disposable bag fees. These State exemptions will commence January 1, 2023.

Analysis:

Sales Tax

Definitions

The following definitions were added or updated to match CML’s Standard Definitions, generally for the purpose of clarifying whether such a transaction is subject to tax or exempt from tax.

Added:

Collection Costs
Community Organization
Contract Auditor
Cover Charge
Data Processing Equipment
Digital Product
Diapers
Dwelling Unit
Food for Home Consumption
Garage Sales

Internet Access Services
Internet Subscription Services
Manufactured Home
Menstrual Care Products
Online Garage Sales
Photovoltaic System
Renewable Energy
Sales that Benefit a Colorado School
School
Software as a Service
Software License Fee
Software Maintenance Agreement
Solar Thermal Systems
Taxable Services
Television and Entertainment Services

Updated:

Engaged in Business
Lodging Services
Marketplace Seller

Exemptions from Sales Tax

Staff proposes the following new exemptions to our code. The purpose in exempting a transaction in the tax code is either for exempting activities that we wish to promote or to make it clear that collecting tax on such a transaction would not be in the best interest of the Town.

Added:

Sales that benefit a Colorado school
Menstrual care products
Diapers
Retail delivery fee
Disposable bag fees
Photovoltaic and solar thermal systems
50% of manufactured homes
Construction materials used for the purposes of constructing affordable housing
Construction materials used for the purpose of projects owned and used by government entities, charitable organizations, and not-for-profit schools
Cover charges (that do not include tangible personal property, such as food and beverage)
Internet Access Services

Updated:

Sales by charitable organizations – removing \$25 dollar limit and replacing with limitation of 90 days of non-consecutive sales.
Garage sales – adding online “garage sales” are not subject to tax (excepting automotive vehicles)

Transactions and Items Subject to Sales Tax

160-8.9 of the Frisco Municipal Code specifies that sales tax applies to all sales or rental of tangible personal property at retail (unless otherwise exempted). However, from time to time, a need arises to provide clarity on certain transactions that fall under this umbrella. The addition of

the following items to “Transactions and Items Subject to Tax” are not intended to garner new net tax revenues for the Town.

Added:

Television and entertainment services

Software maintenance agreements, software license fees, software as a service, data processing equipment, canned software programs, internet subscription services, and digital products

Sales of tangible personal property by a retailer-contractor

Medical and recreational marijuana

Other Housekeeping Items

Reporting Periods – to match State of Colorado filing schedule

Authority of the General Government Director – Retail/Medical Marijuana Licenses & Tobacco licenses have the same requirement as liquor licensees to be in good standing with taxes due to the Town prior to license renewal

Tax Information Confidential – clarifying the Town has the ability to share tax information with contract auditors

Notice of Assessment – allowing the Town to recoup the cost of collection when assessing delinquent taxes

Lien for Tax Due, Perpetuance of Lien, & Release of Lien - allowing the Town to recoup the cost of collection when placing a lien for delinquent taxes

Civil Action to Recover Tax Due - allowing the Town to recoup the cost of collection in a civil action to collect delinquent taxes

Seizure and Sale – adding collection costs to the amount that is to be recovered through a sale

Lodging Tax

Definitions

The following definitions were added or updated to align with Denver’s OTC lawsuit and per a request from an Online Travel Agent platform to clarify that marketplace facilitators are subject to lodging tax.

Added:

Marketplace

Marketplace facilitator

Marketplace seller

Multichannel seller

Updated:

Lodging

Purchase or sale

Purchaser

Tax

Vendor

Other Housekeeping Items

Reporting Periods – to allow more flexibility of filing frequency outside of monthly filing

Confidential Nature of Returns – clarifying the Town has the ability to share tax information with contract auditors

Recovery of Taxes, Penalty, and Interest – allowing the Town to recoup the cost of collection when assessing or placing a lien for delinquent taxes. Also adding ability to collect through civil action in county or district court

Short Term Rental Property Excise Tax

Definitions

The following definitions were added to align with the Town's Lodging Tax code. It is noted in the code that all other terms will have the same meaning as the sales tax code.

Added:

Purchaser

Vendor

Other Housekeeping Items

Tax Imposed – minor updates as requested by Online Travel Agent platforms to clarify that the tax applies to such entities

Financial Impact: These changes to the tax code are, in most instances, aligned with current practices. The changes will provide clarification within the Frisco Municipal Code. A few new exemptions are proposed to align with the State of Colorado statutes - diapers, menstrual products, retail delivery fee, renewable energy sources, & affordable housing. The addition of these exemptions is expected to have a de minimus reduction in Town Tax revenue.

Alignment with Strategic Plan: These amendments have been prepared with the goal of providing quality core services, collecting those taxes which are appropriately due to the Town, and exempting tax on products and services when it aligns with Town priorities.

Staff Recommendation: We ask that Council review the proposed revisions. Staff will be present during the December 13 Work Session to respond to any questions that Council may have. This item will be up for a first reading of an ordinance at a future meeting.

Reviews and Approvals: This report has been reviewed and approved by:

Tom Fisher, Town Manager

Diane McBride, Assistant Town Manager

Thad Renaud, Town Attorney