



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL

FROM: LESLIE EDWARDS, FINANCE DIRECTOR
SOLE DRUMWRIGHT, REVENUE SPECIALIST

RE: SECOND READING 23-02, AN ORDINANCE AMENDING CHAPTER 160 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, COLORADO, CONCERNING TAXATION, BY AMENDING SECTIONS 160-1.1 CONCERNING DEFINITIONS RELATED TO THE TOWN'S SALES TAX; 160-2.1, CONCERNING COLLECTION AND PAYMENT OF SALES TAX; 160-2.4, CONCERNING REPORTING PERIODS FOR THE PAYMENT OF SALES TAXES; 160-3.1, CONCERNING MARIJUANA AND TOBACCO LICENSES; 160-3.3, CONCERNING CONFIDENTIALITY OF TAX INFORMATION; 160-5.6, CONCERNING NOTICE OF ASSESSMENT; 160-7.1, 160-7.2, AND 160-7.3 CONCERNING LIENS RELATED TO THE TOWN'S SALES TAX; 160-7.4 AND 160-7.6, CONCERNING THE RECOVERY OF TAX DUE; 160-8.9, CONCERNING TRANSACTIONS AND ITEMS SUBJECT TO TAX; 160-8.10, CONCERNING EXEMPTIONS FROM SALES TAX; 160-27, CONCERNING THE LEGISLATIVE INTENT RELATED TO THE TOWN'S LODGING TAX; 160-28, CONCERNING DEFINITIONS RELATED TO THE TOWN'S LODGING TAX; 160-35, CONCERNING THE PAYMENT OF LODGING TAX; 160-36, CONCERNING EXCESS TAX RELATED TO THE TOWN'S LODGING TAX; 160-42, CONCERNING CONFIDENTIALITY OF TAX INFORMATION; 160-45, CONCERNING RECOVERY OF TAXES, PENALTY, AND INTEREST; 160-46, CONCERNING LIENS RELATES TO THE TOWN'S LODGING TAX; 160-62 CONCERNING DEFINITIONS RELATED TO THE TOWN'S SHORT-TERM RENTAL PROPERTY EXCISE TAX; AND 160-63 CONCERNING IMPOSITION OF THE TOWN'S SHORT-TERM RENTAL PROPERTY EXCISE TAX; ALL IN ORDER TO SIMPLIFY, STANDARDIZE, AND MAKE MORE EFFICIENT THE REPORTING AND PAYMENT OF SALES, LODGING, AND SHORT- TERM RENTAL TAXES

**COLLECTED BY PERSONS AND ENTITIES DEFINED HEREIN AS MARKETPLACE
FACILITATORS, AMONG OTHERS.**

DATE: JANUARY 24, 2023

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. The failure of vendors to apply and remit tax owed on sales within the Town exposes the Town to unremitted taxes and permits an exception inequitable to local businesses that prevents market participants from competing on an even playing field.

Additionally, 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 commenced January 1, 2023.

This topic was discussed with Town Council at the December 13, 2022 work session and at the first reading of the ordinance on January 10, 2023.

Analysis:

Change since First Reading

For the sake of simplicity, Staff recommends updating Section 160-28, “Definitions,” of the Lodging Tax Code from the “Lodging” definition proposed on first reading. The definition of “Lodging” that appears in this second reading of the ordinance aligns with the sales tax definition for “Lodging Services” developed by the Colorado Municipal League (CML) within the recommended standard definitions.

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. The use of standardized sales tax definitions, by home rule municipalities that locally collect their sales tax, simplifies the municipal sales tax system and benefits businesses, particularly those engaged in business in multiple locally collecting home rule municipalities, and those without a physical presence in one or more municipalities in which they are engaged in business.

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

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

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

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

Updated:

Prosthetic devices – matching definition language for consistency.
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)

Other Housekeeping Items

Responsibility for collection and payment of taxes – applies to Marketplace Facilitators that makes sales into the state exceeding that amounts set by the State statutes.
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

Legislative Intent – providing clarity that the tax is to be applied to the total purchase price charged for lodging furnished.

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

Title – updating STR to Short-Term Rental

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 exemptions are proposed to align with the State of Colorado statutes - diapers, menstrual products, retail delivery fee, renewable energy sources, & affordable housing. These exemptions are 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 service, 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: Staff recommends that Town Council adopt the proposed amendments to the Frisco Town Code on second reading.

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

Tom Fisher, Town Manager
Diane McBride, Assistant Town Manager
Thad Renaud, Town Attorney