

TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO

ORDINANCE 03-17

AN ORDINANCE AUTHORIZING A TAX ON LODGING WITHIN THE TOWN OF FRISCO, SAID TAX TO COMMENCE ON JANUARY 1, 2004; AUTHORIZING THE TOWN COUNCIL TO MAKE SUCH AMENDMENTS TO THE FRISCO CODE AS WILL IMPLEMENT THE INTENT AND PURPOSE OF THIS ORDINANCE; GIVING APPROVAL FOR COLLECTION, RETENTION AND EXPENDITURE OF THE FULL REVENUES DERIVED FROM THE TAX ON LODGING NOTWITHSTANDING ANY STATE SPENDING LIMITATION; SETTING FORTH AN EFFECTIVE DATE; AND PROVIDING FURTHER DETAILS IN RELATION TO THE FOREGOING.

BE IT ORDAINED BY THE TOWN OF FRISCO, COLORADO:

Section 1. Effective January 1, 2004, there shall be imposed upon the purchase price paid or charged for lodging with the Town of Frisco, a tax at the rate of 2.35% of the amount of the purchase price.

Section 2. The registered electors of the Town of Frisco hereby authorize the Town Council to make the amendments to the Frisco Code set forth in Sections 4 and 5 hereof, and to adopt such other ordinances as may be necessary to implement the intent and purpose of this ordinance.

Section 3. The registered electors of the Town of Frisco hereby authorize the revenue change caused by the collection, retention and expenditure of all increased tax revenues generated by the passage of this ordinance, notwithstanding the limitation of Article X, Section 20 of the Colorado Constitution or any other law, such collection, retention or expenditure being outside and apart from any other expenditure of the Town that may be so limited. Expenditures of increased tax revenues generated by the passage of this ordinance 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 ordinance, 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.

Section 4. A new Article IV, Lodging Tax, is hereby added to Chapter 160, TAXATION, of the Frisco Code, which new article shall read as follows:

ARTICLE IV
Lodging Tax

§ 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 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:

- A. 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.
- B. 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, townhome, 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.
- C. MANAGER means the manager of the town; “manager” shall also include such person’s designee.

- D. 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.
- E. PURCHASE OR SALE means the acquisition for consideration by any person of lodging.
- F. PURCHASER means any person who has purchased lodging or to whom lodging has been sold.
- G. TAX means the lodging tax payable by the purchaser or due from a vendor.
- H. TAXPAYER means any person obligated to collect and/or pay lodging tax under this Article.
- I. TOWN means the Town of Frisco, Colorado.
- J. TREASURER means the treasurer of the town; "treasurer" shall also include such person's designee.
- K. VENDOR means any person selling lodging.

§ 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.

- 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. Spending of the monies generated by the tax on lodging shall be allocated as follows:

(1) For the year 2004:

- 60% for economic development, special events, and/or advertising and marketing.
- 40% for recreation amenities, multi-purpose facilities, and/or open space.

(2) For the year 2005:

- 40% for economic development, special events, and/or advertising and marketing.
- 50% for recreation amenities, multi-purpose facilities, and/or open space.
- 10% for operation and maintenance of recreation amenities, multi-purpose facilities, and/or other tourism-related operation and maintenance expenses.

(3) For the year 2006 and future years:

- 30% for economic development, special events, and/or advertising and marketing.
- 60% for recreation amenities, multi-purpose facilities, and/or open space.

- 10% for operation and maintenance of recreation amenities, multi-purpose facilities, and/or other 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 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.
- 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 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 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:

- (1) A taxpayer files a false or fraudulent return with the intent to evade the tax imposed by this Article; or
- (2) 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 therefor.
- 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:
 - (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.

§ 160-45. Recovery of taxes, penalty and interest.

- 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 \$100.00 for such failure and interest on such delinquent taxes at the rate of 10% per annum, plus one-half percent per month from the date when due.
- (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 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 therefor 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.
- (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.
- (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.

If a deficiency in payment of the lodging tax occurs without intent to defraud, there shall be added 15% of the total amount of the deficiency, and interest in such case shall be collected at the rate of 10% per annum on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable 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 100% of the total amount of the deficiency or

\$100.00, whichever is greater, and in such case, the whole amount of the tax unpaid, including the addition, shall become due and payable 20 days after written notice and demand by the treasurer, and an additional 3% per month on said amount shall be added from the date that the return was due until paid.

§ 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.
- 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.

Section 5. Subsection B(3) of § 110-4, Application, of Chapter 110, LICENSING OF BUSINESSES, is hereby amended to read as follows:

- (3) A detailed statement of the kind or nature of business or service, **including whether the business or service provides lodging as that term is defined in § 160-28 of this Code.**

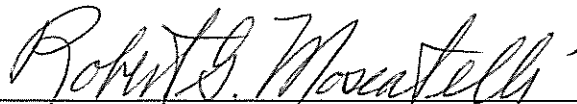
Section 6. It is the intention of the registered electors of the Town of Frisco that this ordinance, or any part or provision hereof, shall be considered severable; any invalidity of any part, section, provision, clause, sentence, or fragment of this ordinance shall not affect the validity of any other portion of this ordinance; the registered electors would have adopted the provisions of this ordinance, or any part or provision hereof, regardless of the validity of any part, section, provision, clause, sentence, or fragment hereof.

Section 7. This Ordinance shall take effect upon its adoption by a majority vote of the electors voting thereon. A copy of the certification of election is attached hereto.

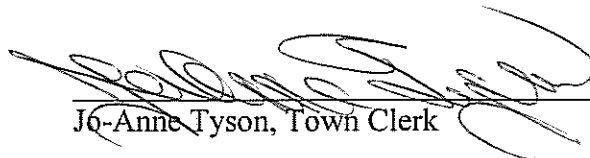
INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED
THIS 26th DAY OF AUGUST 2003.

PASSED ON SECOND AND FINAL READING AND ADOPTED (PENDING VOTER APPROVAL) THIS 9th DAY OF SEPTEMBER 2003.

TOWN OF FRISCO, COLORADO


Robert M. Moscatelli, Mayor

Attest:


Jo-Anne Tyson, Town Clerk

APPROVED AS TO FORM:

Patricia C. Tisdale, Town Attorney