



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: BONNIE MOINET, FINANCE DIRECTOR
RE: ORDINANCE 21-04, AN ORDINANCE AMENDING CHAPTER 110 AND 160 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, COLORADO, CONCERNING BUSINESS LICENSING AND TAXATION.
DATE: FEBRUARY 23, 2021

Summary and Background: Colorado's sales tax system has a unique tax landscape of over 600 jurisdictions. There are 272 municipalities in the system, 103 of which are home rule jurisdictions that can establish their own tax base, requiring businesses to file and remit directly to the municipality. Out of those 103, 71 are self-collections; the Town of Frisco falls into this latter category.

The State of Colorado has grappled with the complexities of Colorado's sales tax landscape for many years. A sales and use tax simplification task force was originally created in 2017 to find ways to streamline the manner in which sales and use tax is collected and remitted in Colorado. On June 21, 2018, the Supreme Court of the United States ruled in favor of the state in *South Dakota v. Wayfair, Inc.* The decision overruled a longstanding physical presence rule, allowing states to require out of state sellers, also known as remote sellers, to collect and remit sales taxes on purchases made by in-state customers so long as the sales tax system in the state is not too burdensome for the out-of-state retailer. This decision amplified the need for increased simplicity in the way sales and use tax is collected in Colorado.

In 2019, the task force advocated for legislation and the General Assembly passed SB19-006 which required the Colorado Department of Revenue and Office of Information Technology (OIT) collaborate to deliver a Sales and Use Tax System (SUTS) that could be a single web portal where businesses could both look up sales and use tax information and file and remit to all Colorado jurisdictions at once.

The SUTS was developed with stakeholders every step of the way, with collaboration between the state, local jurisdictions, vendors and the business community. The State recognized that a system that integrated local jurisdictions was critical to the development of a solution and the Town of Frisco has been a part of the discussions and followed the development of the system since inception of the simplification concept. The following discussion provides Council information to determine if participation in the SUTS system is a viable option for the Town.

Analysis:

Town of Frisco Code Section 160, Taxation, Subsection 16.2-1 states “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.” The definition of retail sales in the Town’s code is: Retail sales means all sales made except wholesale sales. Section 16-8.2 further states “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.”

After the ruling in the Wayfair case discussed above, many online retailers began remitting sales taxes to the Town voluntarily. However, the probability of unremitted sales tax collections for online sales to Town of Frisco residents is high. The continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales allows remote sale customers to unfairly evade a lawful tax and permit an inequitable exception that prevents competition on an even playing field. The delivery of these goods and services into the Town rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services. The SUTS system provides a means to collect additional taxes that are due to the Town.

What the SUTS System Does:

The SUTS system provides an online portal to include:

- Single point of remittance and a uniform remittance form
- GIS tax rate lookup tool
- Taxability and exemption matrix
- Ability to calculate tax rates on items with different tax rates in the same jurisdiction
- A record of the history of any change

Changes to Current Town of Frisco Sales Tax Collections:

Currently, the Town self-collects its sales taxes and the Town currently requires a sales tax license for all businesses doing business within the Town of Frisco. The Town’s code definition of retail sales is sufficient to meet the definitional SUTS requirements of economic nexus and no revision to the code definition is needed to allow the Town to participate in the SUTS. However, under SUTS, the Town would no longer require a separate license, outside of the SUTS system license, for any business without a physical location in the Town. Non-physical businesses will only be required to report and remit sales taxes per Town code through the portal. This change requires an Ordinance to amend our code to reflect this exclusion from licensing and that ordinance is attached herewith.

Online retailers will no longer report and remit directly to the Town; these transactions will be processed through MUNIREvs and typically transferred to the Town’s bank account within 5 business days.

Contracts Required to Participate:

In order to participate in this program, the Town would need to enter into three agreements:

1. **Agreement with Colorado Department of Revenue** – By entering into this agreement, the Town would gain access to the Colorado Department of Revenue owned SUTS system for use in the collection and payment of sales taxes and insuring the confidentiality of information within that system. There is no fee associated with this agreement; however, the contract does require eliminating the Town's separate licensing, outside the SUTS system license, for any business without a physical location in the Town.
2. **Agreement with MUNIRevs** – The Colorado Department of Revenue contracted with MUNIRevs, Inc. (MR) for the purpose of collecting sales taxes from online retailers and remitting those taxes to the Town of Frisco. In order for the Town to participate in the SUTS system, the Town must also enter an agreement with MUNIRevs; that agreement is part of this packet. Retailers would file and remit using the online portal of the system and its standard reports and tax return formats. MR will remit collections and reports to the Town upon settlement, typically within five business days. The Town is responsible for fees for ACH Credit and Debit transfers and merchant fees for both echeck and credit card payments.
3. **Agreement with Transaction Tax Resources (TTR)** – The Colorado Department of Revenue also contracted with Transaction Tax Resources, Inc. (TTR) for the purpose of using TTR's Colorado Lookup Tool and Administrative Tool and the Town is also required to contract with TTR in order to participate in the SUTS system. TTR's software provides a website where retailers can obtain state and local tax rates by location in Colorado. TTR's website is not used to collect or remit tax but provides sales tax rates, rules and boundaries to taxpayers and the public. Taxpayers then use this information to remit taxes and complete tax returns on MUNIRev's system.

Financial Impact:

There are no fees associated with use of the system, as the State funded the development of the program. There will be some fees the Town will incur related to transaction banking fees but these will be minimal and netted with the proceeds the Town receives.

In light of the many online retailers who are not currently voluntarily remitting taxes to the Town due to the complexity of the Colorado sales tax system as it exists today, the Town can expect to generate additional sales tax revenues by participating in this program. It is difficult to predict what kind of increase that may be and no forecast is presented as part of this report. Should the Town participate in this new system, staff will provide comparative reports as they become available over time.

Alignment with Strategic Plan: Participation in the SUTS requires online retailers to file and remit electronically, furthering Council's goal to digitize government services throughout Town operations.

Environmental Sustainability: Participation in the SUTS requires online retailers to file and remit electronically, furthering Council's goal to digitize government services throughout Town operations.

Staff Recommendation: Staff is asking Council:

Should the Town of Frisco participate in the SUTS system to provide online retailers and marketplace facilitators a portal to report and remit sales taxes to the Town of Frisco?

Approved By:

Nancy Kerry, Town Manager
Bonnie Moinet, Finance Director

Attachments:

Attachment 1 – Ordinance Amending Chapters 110 and 160 Concerning Business Licensing and Taxation