

ORDINANCE NO. 6

SERIES OF 2018

AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO
AMENDING ARTICLE 3 OF CHAPTER 4 OF THE CARBONDALE TOWN'S
MUNICIPAL CODE (SALES TAX)

WHEREAS, pursuant to Section 3.6(c) of the Home Rule Charter of the Town of Carbondale ("Town"), the Board of Trustees is authorized to amend the provisions of the Municipal Code; and

WHEREAS, Article 3 of Chapter 4 of the Municipal Code (Sales Tax) sets forth the Town's standards and requirements with regard to sales tax licensing; and

WHEREAS, other home rule municipalities in Colorado that collect their own sales tax have been making efforts to update their sales tax codes to be more consistent with each other; and


WHEREAS, the Board of Trustees finds that it would be in the interest of public safety and welfare to update Article 3 of Chapter 4 of the Municipal Code to standardize certain terms and procedures in order to be more consistent with other home rule municipalities that self-collect sales tax.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, THAT:

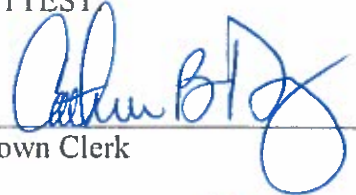
1. Sections 4-3-30, 4-3-50, and 4-3-60, of Article 3 of Chapter 4 of the Carbondale Municipal Code are hereby amended to read as set forth on the attached Exhibit A (deletions are in ~~bold strike through~~, additions are in *bold italic*). Except as amended herein, all other provisions of Article 3 of Chapter 4 of the Carbondale Municipal Code shall remain in full force and effect.
2. If any other ordinance, or parts of ordinances, are in conflict with the provisions of this Ordinance, they are hereby repealed to the extent of such conflict only.
3. This Ordinance shall be effective upon posting and publication in accordance with the Carbondale Home Rule Charter.

INTRODUCED, READ AND PASSED this 22ND day of May,
2018.

THE TOWN OF CARBONDALE


Dan Richardson, Mayor

ATTEST:


Town Clerk

Posted: 5/29/18
Published: 6/7/18
Effective: 7/7/18



EXHIBIT A

(attach to Ordinance No.6 Series of 2018, Town of Carbondale)

Sec. 4-3-20. - Definitions.

The following words and phrases, as used in this Article, shall have the following meanings, except in the event where the immediate context clearly indicates a different meaning:

Access services or *carrier access services* means the service furnished by a local exchange company to its customers, ~~which provides telecommunications services which allow it to provide such telecommunications services.~~

Auction 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 or 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, semitrailers or mobile homes. *Automotive vehicle* 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 ~~direct or indirect~~ gain, benefit or advantage.

Charitable organization means any entity *which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government. that:*

- ~~(1) Has been certified as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and~~
- ~~(2) Is 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, or any veterans' organization registered under Section 501(c)(19) of the Internal Revenue Code of 1986, as amended, for the purpose of sponsoring a special event, meeting or other function in the State, so long as such event, meeting or function is not part of such organization's regular activities in the State.~~

Coin-operated device means any device operated by coins, currency or any substitute therefor.

Commercial packaging materials means containers, labels and/or cases, *that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not*

~~include Commercial Shipping Materials. and shipping cases that are sold to a manufacturer, compounder, wholesaler, retailer, packager, distributor or bottler for sale, profit or use and are also:~~

- ~~(1) Used by the manufacturer, compounder, wholesaler, retailer, packager, distributor or bottler to contain or label the finished product;~~
- ~~(2) Transferred by the manufacturer, compounder, wholesaler, retailer, packager, distributor or bottler along with and as part of the finished product to the purchaser; and~~
- ~~(3) Not returnable to the manufacturer, compounder, wholesaler, retailer, packager, distributor or bottler for refuse.~~

Commercial shipping materials means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

Construction and building 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, including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, electrical heating and cooling equipment, fireplace inserts, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, pipe valves and pipe fittings, piping, 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, wallpaper, water mains and meters, weather stripping, wire netting and screen and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

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

~~*Drugs dispensed in accordance with 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 pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the drug is offered and directions, if any, to be placed on the label.~~

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:

- (1) Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;
- (2) Sends one 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;
- (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
- (5) Makes more than one delivery into the taxing jurisdiction within a 12-month period *by any means other than a common carrier*.

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

Finance Director means the Finance Director of the Town, the Finance Director's designee or such other person designated by the Town.

Food means food for domestic home consumption, as defined in 7 U.S.C. § 2012 ~~(g)-(1987)~~ **(k)(2014)**, as amended, for purposes of the ~~federal Food Stamp Program~~ *supplemental nutrition assistance program, or any successor program* as defined in 7 U.S.C. § 2012~~(h)-(1987)~~**(t)**, as amended; except that *food* does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; *packaged and unpackaged cold* sandwiches; deli trays; and ~~hot-food-or-drink-~~ *hot or cold beverages served in unsealed containers or cups* that are vended by or through machines or non-coin-operated or coin-collecting food and snack devices on behalf of a vendor.

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

License means a Town sales and use tax license.

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, unless such is prohibited by some other ordinance of the Town. *Livestock* shall also mean *alternative livestock*, as defined under Section 35-41.5-102, C.R.S. *Livestock* shall not mean a pet animal as defined under Section 35-80-102(10), C.R.S.

Lodging services means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast, residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, or similar establishment, for a period of less than 30 consecutive days under any concession, permit, right of access, license to use or other agreement, or otherwise.

Manufacturing means the operation of ~~producing a new product, article, substance or commodity different from and having a distinctive name, character or use from raw or prepared materials.~~ *or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.*

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

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 inserts, circulars, directories, maps, racing programs, reprints, newspaper clippings, mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Occasional sales by a charitable organization means retail sales of tangible personal property, including concessions, for fundraising purposes for charitable organizations as defined above, if:

- (1) The sale of tangible personal property or concessions by the charitable organization takes place for no more than 12 days, whether or not such days are consecutive, during any one calendar year;
- (2) The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service; and
- (3) The funds raised by the charitable organization through these sales do not exceed \$25,000.00 during any one calendar year.

Person means any individual, firm, partnership, joint venture, *limited liability corporation*, corporation, estate or trust, receiver, trustees, 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.

~~*Pre-press preparation printing materials* means those tangible products converted to use for a specific print job that are subsequently saved but can only be reused for that same print client upon return. Title to such pre-press preparation printing materials must pass to an independent customer with the sale of the printed materials, and they must be reusable for their original purpose or a similar purpose after the press run. Examples of pre-press preparation printing materials include, but are not limited to, photos, color keys, dies, engravings, light sensitive film or paper, masking sheets of any material, plates, rotogravure cylinders and proofing samples of any material. No disposable materials or materials consumed to a significant degree are pre-press preparation printing materials for the purposes of this Article. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers and cleaners.~~

Prepress preparation material means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

Preprinted newspaper supplements means inserts, attachments or supplements circulated in newspapers that are:

- (1) Primarily devoted to advertising; and
- (2) *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 animals for which the drug is offered and directions, if any, to be placed on the label.~~

Prescription drugs for animals means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only" and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Prescription drugs for humans means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Price or purchase price means the ~~price to the consumer~~, aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal or state 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:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business.
- (2) 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 the ~~State~~ **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.
- ~~(3) In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunications services that are taxable pursuant to this Article, purchase price means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunications service. Nothing in this Subparagraph shall be construed to define purchase price as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunications services.~~

Price or purchase price includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) 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.
- (4) The total price charged on credit sales, including finance charges, which are not separately stated *at the time of sale*. 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 that the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated *at the time of sale* is not part of the purchase price.
- (5) Installation, *applying, remodeling or repairing the property*, delivery and wheeling-in charges included in the purchase price that are not separately stated.

- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturer's excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and profit thereon.

Price or purchase price shall not include:

- (1) Any sales or use tax imposed by the State or by any political subdivision thereof.
- (2) 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 the State. Out-of-state trade-ins are an allowable adjustment to the purchase price.
- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser *and the seller is not reimbursed for the discount by the manufacturer or someone else*. 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.

Private communications services means telecommunications services furnished to a subscriber which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

Prosthetic devices/device for humans means any artificial limb, part, device or appliance for human use which *replaces a body part or 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, ocular, cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

Retail marijuana has the same meaning as set forth in Section 16(2)(f) of Article XVIII of the Colorado Constitution.

Retail marijuana products has the same meaning as set forth in Section 16(2)(k) of Article XVIII of the Colorado Constitution.

Retail marijuana store has the same meaning as set forth in Section 16(2)(n) of Article XVIII of the Colorado Constitution (an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers).

Retail sales means all sales except wholesale sales.

Retailer means any person selling, leasing, or renting, *or granting a license to use* tangible personal property or services at retail. Retailer shall include, *but is not limited to*, any:

- (1) Auctioneer;
- (2) 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; or
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.
- (4) *Retailer-Contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.*

~~Return means the sales and use tax reporting form used to report sales and use tax. any form prescribed by the Town's administration for computing and reporting a total tax liability.~~

~~Sale or sale and purchase includes installment and credit sales and the exchange of property, as well as the sale thereof, for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale; and the sale or furnishing of electrical energy, gas, steam, telephone or telegraph services taxable under the terms of this Article. Both terms shall include:~~

Sale or purchase means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

- (1) The transfer, either conditionally or absolutely, of title, possession or both to tangible personal property.
- (2) 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.
- (3) *Performance of taxable services; or barter or exchange for other tangible personal property, other taxable products, or services.*

~~Neither sale nor sale and purchase shall~~ *The terms sale or purchase do not* include:

- (1) A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;
- ~~(2) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;~~
- (32) The transfer of assets of shareholders in the formation or dissolution of professional corporations, *if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;*
- (43) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, *if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;*
- (54) The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least 80 percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
- (65) The transfer of assets from a subsidiary corporation or corporations which are owned at least 80 percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least 80 percent 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;
- (76) A transfer of a limited liability company or partnership interest;
- ~~(8) The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code;~~
- ~~(9) The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;~~

(407) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder; or

(448) The transfer of assets between parent and closely held subsidiary corporations, 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 same time it acquired such assets, except to the extent provided by Subparagraph i. above. For the purposes of this Subparagraph, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and owns at least 80 percent of the total number of shares of all other classes of stock.

Sales tax means the tax *that is collected or required* to be collected and remitted by a retailer on sales taxes under this Code.

School means ~~an educational institution having a curriculum comparable to grade, grammar, junior high, high school or college, or any combination thereof, requiring daily attendance, having an enrollment of at least 40 students and charging a tuition fee.~~ *a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.*

Software means programs or applications that are downloaded and not written for a particular user.

Software program means *a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes:*

(1) Custom software program, which is a software program prepared to the special order or specifications of a single customer;

(2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf (“COTS”),” “mass produced” or “standardized;”

(3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and

(4) The generic term “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing software programs.

Software as a service means *software that is rented, leased or subscribed to from a provider and used at the consumer’s location, including but not limited to applications, systems or programs.*

Software license fee means *a fee charged for the right to use, access, or maintain software programs.*

Software maintenance agreement means *an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for*

software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support

State Treasurer means the State Treasurer of the State of Colorado.

Tangible personal property means ~~corporeal personal property. The term shall not be construed to include newspapers, as legally defined above, nor preprinted newspaper supplements, as defined above, which become attached to or inserted in and distributed with such newspapers, or direct-mail advertising materials which are distributed in the State by any person engaged solely and exclusively in the business of providing cooperative direct-mail advertising.~~ *personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.*

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. either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require.~~

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

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

Taxable services means services subject to tax pursuant to this Article.

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

Telecommunications service 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, *Voice over Internet Protocol (VoIP)*, or any combinations of such media. ~~Telecommunications service includes, but is not limited to, residential and business service, directory assistance, cellular mobile telephone or telecommunications 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 nontransmission service which constitutes computer processing applications used to act on the information to be transmitted.~~

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 \$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 Article.~~

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.

WATS-800 service means any outbound or inbound interstate-wide area telecommunications service or other similar service which entitles the subscriber, upon payment of a periodic charge, based upon a flat amount and/or usage, to make or receive a large volume of telephonic communications to or from persons having telephone or radio telephone stations in specified areas which are outside the telephone system area in which the subscriber's station is located.

Wholesale sales means a sale by wholesalers to retailers merchants, jobbers, dealers or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale, and the latter sales shall be deemed retail sales and subject to the provisions of this Article. ~~This term includes sales of all pre-press preparation printing materials, as defined above, which are used by~~

~~a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within the State. In addition:~~

- ~~(1) 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 taxation under this Article. As used in this Subparagraph with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:
 - ~~a. It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or~~
 - ~~b. Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.~~~~
- ~~(2) Sales and purchases of electricity, coal, gas, fuel, oil, steam, coke or nuclear fuel for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone and radio communication, street and railroad transportation services, all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this Article.~~

Wholesaler means any person *doing an organized wholesale or jobbing business* and selling to retailers, jobbers, dealers or other wholesalers *for the purpose* of resale and not for storage, use, consumption or distribution.

Sec. 4-3-50. - Transactions, items and services subject to tax.

The tax levied by Subsection 4-3-30(a) above shall apply to the price of the following:

- (1) Generally. The tax shall be levied on the purchase price paid or charged upon all sales and purchases of tangible personal property at retail, including the full purchase price of articles sold after manufacture or after having been made to order, and including the full purchase price for material used and the service performed in connection therewith, excluding articles that are otherwise exempted in this Article.
- (2) Long-term leases. Unless otherwise exempted in this Chapter, the tax shall apply when a right to continuous possession or use for more than three years of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if an outright sale was made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid.
- (3) Fuel services. Taxable sales include sales of gas, electricity, coal, wood, fuel oil and coke furnished for residential and commercial consumption and that are not intended for resale.
- (4) Food and drink. Taxable sales include meals sold to employees, except that meals which are sold to employees at a reduced charge and which are considered part of the employee's salary, wages or income shall be exempt from taxation under this Paragraph. Taxable sales include the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, night clubs, cabarets, resorts, snack bars, caterers, carryout shops 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. Cover charges shall be included as part of the amount paid for such food or drink. Any retailer selling malt, vinous or spirituous liquors by the drink may include in the sales price the tax levied under this Article.
- (5) Food. Taxable sales expressly include all sales of food, notwithstanding the exemptions made for the same by the State in Sections 39-26-707(e) and 39-26-714(2), C.R.S., unless otherwise exempted in this Article.
- (6) Machinery or machine tools. Taxable sales expressly include all purchases of machinery or machine tools, notwithstanding the exemption made for the same by the State in Section 39-26-709(1), C.R.S.
- (7) **Computer Software** programs. The purchase price paid for *all software programs except custom software programs*. ~~systems programs or application programs that are not written specifically for a particular use is taxable. The tax applies regardless of whether the systems programs or application programs are purchased, leased or rented or the purchaser is licensed to use or otherwise granted a right to use the systems programs or applications. The tax also applies regardless of the medium of transmission, including via CD, disk, tape, download, electronic mail or any other method.~~
- (8) Exchanges of property. In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, tax shall apply; however, the tax shall exclude the fair market value of the exchanged property from the consideration or purchase price 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 the State, including but not limited to vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft.
- (9) Exchanges of vehicles. The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this Article shall be prima facie

evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he or she is thereby subject to any licensing requirements necessary to engage in such activity.

- (10) Telecommunications services shall be taxable, except carrier access services, interstate or international WATS-800 service and interstate or international private communications service for all international, interstate and intrastate telecommunications service originating from or received on telecommunications equipment in the Town if the charge for the service is billed to an apparatus, telephone or account in the Town without regard to where the bill for such services is actually received. If a taxpayer presents to the Town written proof of double taxation of said telecommunications services, the Town shall credit against the tax accruing under this Article the amount of tax actually paid by the taxpayer to the other taxing entity. If the tax accruing under this Article exceeds the amount of the tax actually paid by the taxpayer to the other taxing entity, the taxpayer shall pay the difference to the Town. The credit provided for in this Paragraph shall not be allowed if the tax actually paid by the taxpayer to the other taxing entity was not by law required to be paid.
- (11) Mobile telecommunications services, but only if the service is provided to a customer whose place of primary use is within the State and the service originates and terminates within the State.
- (12) Energy services for gas service and electric service, whether furnished by municipal, public or private corporations or enterprises, shall be taxable. Tax also applies to sales of steam when consumed or used by the purchaser and not resold in original form, whether furnished or sold by municipal, public or private corporations or enterprises.
- (13) Lodging fares. The transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee or person acting in a representative capacity, or any other combination of individuals by whatever name known, to a another person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, under any concession, permit, right of access, license to use or other agreement, or otherwise.

Sec. 4-3-60. - Exemptions from sales tax.

The tax levied by Section 4-3-30 above shall not apply to the following, and this list shall not be increased by implication or similarity:

- (1) Certain tangible personal property. The sale and purchase of certain tangible personal property if:
 - a. The sale is to individuals who reside or businesses that are located outside the Town;
 - b. The articles purchased are delivered to the purchaser outside the Town by common carrier, by the conveyance of the seller or by mail, and such articles delivered are used outside the Town; or
 - c. The article purchased is an automotive vehicle purchased by a nonresident of the Town for registration outside the Town.
- (2) Manufacturing components. All sales and purchases of tangible personal property by a manufacturer that uses the property as a component part of goods that it manufactures, including but not limited to high technology goods, and that donates such goods to the United States government, the State, the Town or any department, institution or political subdivision thereof, or any organization exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, to the extent that the aggregate value of the goods included in a single donation exceeds \$1,000.00.
- (3) Medical supplies. The sale and purchase of medical supplies and therapeutic devices.
- (4) Cigarettes. The purchase and sale of cigarettes.
- (5) Charitable organizations. All direct sales to charitable organizations in the conduct of their regular charitable functions and activities, when billed to and paid for by the charitable organization; and all occasional sales by a charitable organization.
- (6) Construction and building materials. All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by: (a) the United States government, the State, its departments and institutions and the political subdivisions thereof in their governmental capacities only; (b) charitable organizations in the conduct of their regular charitable functions and activities; or (c) schools, other than schools held or conducted for private or corporate profit. On application by a purchaser or seller, the Finance Director shall issue to a contractor or subcontractor a certificate of exemption indicating that the contractor's or subcontractor's purchase of construction or building materials is for a purpose stated above and is therefore free from sales tax. The Finance Director shall provide forms for the application and certificate and shall have the authority to verify that the contractor or subcontractor is, in fact, entitled to the issuance of the certificate prior to such issuance.
- (7) Nontaxable things. All sales which the Town is prohibited from taxing under the Constitution or laws of the United States or the Constitution of the State.
- (8) Certain materials relevant to common carriers. All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by the common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction and building materials shall, at the time of the actual use, be subject to any use tax hereinafter imposed by the Town. This exemption and subjection shall also apply to:
 - a. The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment or other railroad rolling stock; and
 - b. The sale of locomotives, freight cars, railroad work equipment and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

- (9) Certain vehicles and related items. The sale of a new or used trailer, semitrailer, truck, truck tractor or truck body if such vehicle is purchased for use exclusively outside the State or in interstate commerce.
- (10) Certain aircrafts and related items. All sales of aircraft used or purchased for use in interstate commerce by a commercial airline; and all sales of tangible personal property that is to be permanently affixed or attached as a component part of any such aircraft.
- (11) Commodities taxed under Title 39. The purchase and sale of all commodities which are taxed under the provisions of Article 27 of Title 39, C.R.S., and all commodities which are taxed under such provisions and for which the tax is refunded, and all sales and purchases of aviation fuel upon which no state sales tax was in fact collected and retained prior to July 1, 1963; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a sales tax was collected prior to January 1, 1989, shall not be exempt. In any case in which a sales tax has been imposed on lubricating oil used other than in motor vehicles, the purchaser shall be entitled to a refund from the Finance Director, in accordance with the terms of Section 39-26-715, C.R.S.
- (12) Special fuel. The sale of special fuel, as defined in Section 39-27-101(29), C.R.S., used for the operation of farm vehicles when such vehicles are being used on farms and ranches.
- (13) Farm equipment. The purchase or sale of farm equipment, and any farm equipment under lease or contract, if the fair market value of the equipment is at least \$1,000.00, the equipment is rented or leased for use primarily and directly in any farm operation, and the lessor or seller of such farm equipment obtains a signed affidavit from the lessee, renter or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation. For the purposes of this Paragraph, *farm equipment and farm operation* shall have the same meanings as set forth in Section 39-26-716, C.R.S.
- (14) Livestock and related terms. All sales and purchases of livestock, all sales and purchases of live fish for stocking purposes and all farm close-out sales, including all sales and purchases of agricultural compounds, as defined by Section 39-26-706, C.R.S., that are to be consumed by, administered to or otherwise used in caring for livestock, and all sales and purchases of semen for agricultural or ranching purposes.
- (15) Feed and related items. All sales and purchases of feed for livestock, all sales and purchases of seeds, all sales and purchases of orchard trees and all sales and purchase of straw and other bedding for use in the care of livestock or poultry.
- (16) Wholesale sales. All wholesale sales. However, wholesale sales of retail marijuana are subject to an excise tax under Article 6 of this Chapter.
- (17) Software. Software that is web-based, data processing services and software maintenance agreements that include provisions for technical support.
- (18) Manufacturing or processing. 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.
- (19) Commercial packaging materials. Sales of commercial packaging materials.
- (20) Personal possessions. Sales of personal possessions where said sale is based out of a residence, so long as no individual period of sale continues more than three consecutive days and so long as the seller does not engage in the sale or trade of such possessions more than five weekends in a calendar year. Said sales shall not be exempt when conducted by professional or compensated agents of the owner of the items being sold.
- (21) Items related to rental inventory. 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.

- (22) Certain labor. Labor sold with tangible personal property if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing, fabricating or other processing labor is never exempt.
- (23) Construction materials. Construction materials if the purchaser of such materials presents to the retailer a building permit, or other documentation acceptable to the Town, which evidences that a use tax on such materials has been paid or is required to be paid to the Town or another municipality.
- (24) Coin-operated vending machines and related items. Tangible personal property sold through coin-operated vending machines or other devices for a price of \$0.15 or less.
- (25) Certain food. The sale of food as defined in 7 U.S.C. § 2012(g) that is purchased by the medium of exchange commonly known as "food stamps," and the sale of food as defined in or pursuant to 42 U.S.C. § 1786 that is purchased with vouchers, checks or similar certificates of exchange for the "Special Supplemental Food Program for Women, Infants and Children."
- (26) Certain items sold to food and beverage vendors. The sale of any article to a retailer or vendor of food, meals or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals or beverages purchased, and if a tax is paid on the retail sale.
- (27) Part of factory-built residential structure. The amount of 48 percent of the purchase price of any factory-built residential structure, as defined by Section 24-32-3302(10), C.R.S.
- (28) Sale of mobile home. The entire purchase price in any subsequent sale of a mobile home after such mobile home has been subject to the payment of sales tax pursuant to this Article.
- (29) Certain equipment. All sales of equipment, as defined in Section 12-9-102(5), C.R.S., to a bingo-affle licensee, as defined in Section 12-9-102(1.2), C.R.S.
- (30) Newspapers. Newspapers and preprinted newspaper supplements.
- (31) Sales to schools. All sales made to schools, other than schools held or conducted for private or corporate profit.
- (32) Long-term occupancy. All sales and purchases of commodities and services to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least 30 consecutive days during the calendar year or preceding year.
- (33) Internet. Internet access services, as defined by Section 39-26-706, C.R.S.
- (34) Certain bullions and coins. All sales of precious metal bullion and coins, as defined in Sections 39-26-102(2.6) and 39-26-102(6.5), C.R.S.
- (35) Certain items relevant to manufacture of iron and steel. All sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale or profit and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores.
- (36) Items related to converting power sources. All sales of any motor vehicle, power source for any motor vehicle or parts used for converting the power source for any motor vehicle, if the gross vehicle weight rating of the motor vehicle is greater than 10,000 pounds and if the motor vehicle, power source or parts used for converting the power source are certified by the federal Environmental Protection Agency or any state, as provided in the "Federal Clean Air Act," as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard. For purposes of this Paragraph, unless the context otherwise requires, motor vehicle shall have the same meaning as in Section 39-22-516(2.5)(a)(III), C.R.S., *parts used for*

converting shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system and other components associated with reducing the emissions characteristics of an engine or motor, and *power source* shall have the same meaning as set forth in Section 39-22-516(2.5)(a)(V), C.R.S.

- (37) 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 taxation under this Article. As used in this Subparagraph with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:**
- a. It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or**
 - b. Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.**
- (38) Sales and purchases of electricity, coal, gas, fuel, oil, steam, coke or nuclear fuel for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone and radio communication, street and railroad transportation services, all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this Article.**