



BROOMFIELD CITY COUNCIL

To: Mayor and City Council
From: Charles Ozaki, City and County Manager
Prepared by: Pat Soderberg, Finance Director
Kimberly Pfeifer, Revenue Manager
Waishing Chiem, Sales Tax Administrator

| <i>Meeting Date</i> | <i>Agenda Category</i> | <i>Agenda Item #</i> |
|--|------------------------|----------------------|
| March 13, 2018 | Council Business | 11(a) |
| 1. Public Hearing regarding Proposed Ordinance 2062 Amending Broomfield Municipal Code Section 03-04-030 and 03-04-070 - Relating to Sales Tax 2. Public Hearing regarding Proposed Ordinance 2063 Amending Broomfield Municipal Code Section 08-08-060(D) - Relating to Use Tax 3. Following and Subject to the Results of the Public Hearing, Consideration of Ordinance No. 2062 - Second and Final Reading 4. Following and Subject to the Results of the Public Hearing, Consideration of Ordinance No. 2063 - Second and Final Reading | | |
| Summary | | |
| <ul style="list-style-type: none"> • As a home rule entity, Broomfield locally governs the imposition and collection of city and county sales and use taxes. The regulations governing these taxes are outlined in the Broomfield Municipal Code (BMC) Chapters 3-04, Sales Tax, and 3-08, Use Tax. • In Colorado there are 70 home rule municipalities, each one establishing the regulations for setting the sales and use tax rates, the base that the rates are applied to, how those taxes are collected and how remittances of the tax are audited. For businesses that operate in multiple local jurisdictions within Colorado, the burden of collecting and remitting sales and use taxes with differing rates and bases has generated concerns. Those concerns were brought to the attention of the state legislature. • In 2014, a bipartisan group of state senators and representatives sought to draft a referred constitutional amendment that would have required all home rule, self-collecting sales and use tax jurisdictions to utilize standardized definitions developed by a State board. This effort did not come to fruition. However, a Senate Joint Resolution (SJR14-038) was adopted by the General Assembly directing the Colorado Municipal League (CML) to develop standardized definitions that could be incorporated into the code for home rule jurisdictions to make locally collected taxes easier for businesses to file, report, and remit. • In response to this, CML undertook the Standardized Sales Tax Project, which seeks to encourage home rule, self-collecting sales and use tax jurisdictions to adopt standardized definitions in their sales and use tax codes with the goal of simplifying the sales tax system for multi-jurisdictional businesses. The CML Sales Tax Simplification Committee developed a set of standardized definitions in order to provide clarification, while being revenue-neutral. By having standardized definitions, the complexity of operating businesses in multiple Colorado jurisdictions can be lessened. • As of November 1, 2017, 20 out of 70 home rule, self-collecting municipalities have adopted the definitions in part or as a whole: Arvada, Aspen, Aurora, Avon, Cortez, Dacono, Denver, Edgewater, Fort Collins, Frisco, Golden, Greeley, Gypsum, Greenwood Village, Longmont, Louisville, Northglenn, Parker, Westminster, and Wheat Ridge. • A Broomfield team made up of staff from the City and County Attorney's Office and the Finance Department (Revenue Division) reviewed the proposed CML standardized definitions to determine what changes might be made to the BMC to incorporate the recommendations of the project. • The following proposed amendments to the BMC were determined to address the recommendations of the project: <ul style="list-style-type: none"> ○ Section 3-04-030 ("Sales; where consumated") is proposed to be amended to delete unnecessary language. This particular section was the subject of a sales tax appeal and the amendment is intended to avoid such disputes in the future. ○ Proposed amendments to BMC Section 3-04-070 ("Definitions") include the recommended CML standardized definitions that provide clarification, and updates to existing definitions to reflect current practices or newer technology. None of the proposed changes cause a change in taxability, i.e., the proposed amendments are revenue-neutral. Standardized definitions included in the CML project which are not applicable to Broomfield are not proposed to be adopted. ○ Further proposed "housekeeping" revisions to Chapter 3-04 ("Sales Tax") include elimination of definitions which are not actually used in the chapter and updating references to federal and Colorado statutes. ○ Proposed revisions also include changes made to incorporate the new definitions wherever they are used throughout Chapter 3-04. ○ Chapter 3-08 of the BMC ("Use Tax") is being recommended for amendment in Section 3-08-060 ("Construction and building materials; method of payment") to eliminate interest on use tax refunds. • If the proposed amendments are adopted, staff will work with sales and use tax paying businesses to explain the modifications to the BMC. Information about code revisions will be on the sales tax website and on sales tax returns. • After the first reading of Ordinance No. 2062 was approved on February 13, 2018, minor corrections were made to the lettering in section (GG). Therefore, if approved, Ordinance No. 2062, as amended, will need to be published in full. • If approved, proposed Ordinance No. 2062 will amend the Sales Tax section of the BMC and Ordinance No. 2063 will amend the Use Tax section of the BMC. | | |
| Prior Council Action | | |
| <ul style="list-style-type: none"> • February 13, 2018 - Council approved Ordinances #2062 and #2063 on first reading • Ordinance 2062 was published in full February 18, 2018. Ordinance 2063 was published in full February 22, 2018 • Chapter 3-04 ("Sales Tax") was added in 2001 pursuant to Ordinance No. 1656. Chapter 3-08 ("Use Tax") was added in 1985 pursuant to Ordinance No. 667. • Chapters 3-04 and 3-08 were last amended by Ordinance No. 1921 in 2010. | | |
| Financial Considerations | | |
| All proposed amendments are revenue neutral. | | |
| Alternatives | | |
| Council may decline to adopt Ordinance Nos. 2062 and 2063 or modify them. | | |
| Proposed Actions/Recommendations | | |
| Subject to the results of the Public Hearings and if Council wishes to approve the ordinances, the appropriate motions are... | | |
| <ul style="list-style-type: none"> • That Ordinance No. 2062, as amended, be adopted on second reading and ordered published in full; • That Ordinance No. 2063 be adopted on second reading and ordered published by title. | | |

ORDINANCE NO. 2062

AN ORDINANCE AMENDING SECTION 3-04-030 AND SECTION 3-04-070 OF CHAPTER 3-04 OF THE BROOMFIELD MUNICIPAL CODE RELATING TO SALES TAX

WHEREAS, the Colorado Municipal League developed standardized definitions for use in sales tax codes in home rule self-collecting jurisdictions with the aim of simplifying sales tax collection in Colorado; and

WHEREAS, the City and County of Broomfield seeks to join other home rule self-collecting municipalities in simplifying sales tax collection in order to work with its business partners located in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. Section 3-04-030, Sales; where consummated, of the Broomfield Municipal Code is amended to read as follows:

3-04-030 - Sales; ~~where consummated~~ **title transfer.**

~~For the purpose of this chapter, all retail sales are consummated at the place of business of the retailer, unless tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the city, or to a common carrier for delivery to a destination outside the limits of the city. The gross receipts from such sales shall include delivery charges. If legal title to the property sold is transferred to the purchaser, or his or her agent, prior to delivery to a destination outside the limits of the city, the place of taxation is deemed within the city.~~

Section 2. Section 3-04-070, Definitions, of the Broomfield Municipal Code is is amended to read as follows:

3-04-070 - Definitions.

As used in this chapter, unless the context clearly indicates otherwise, certain words, terms, and phrases are defined as follows:

(A) *Access services* means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

(B) *Agricultural compounds* means:

(1) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(2) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and

~~(3) Animal pharmaceuticals that have been approved by the food and drug administration.~~

(3) Prescription drugs for animals.

(C) *Attachments* means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(D) *Auction* means any sale where tangible personal property is sold by an auctioneer who is either the agent or the owner of such property or is in fact the owner thereof.

(E) *Business* means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

(F) *Charitable organization* means any entity which:

(1) Has been certified as a ~~not-for-profit~~ **nonprofit** organization under Section 501(c)(3) of the Internal Revenue Code; and

(2) Is ~~a religious or charitable organization, which 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 burdens of government.

(G) *Claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(H) *Coins* means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium, or other such metals now, in the future, and heretofore designated as a medium of exchange under the laws of this state, the United States, or any foreign nation.

(I) *Contract Auditor* means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

~~(I) *Cooperative direct mail advertising* means advertising for one or more businesses, which is in the form of discount coupons, advertising leaflets, or other printed advertising, which is delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising.~~

~~(J) *Direct mail advertising materials* means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.~~

~~(K) *Doing business in this city* means the selling, leasing, renting, or any activity in connection with the selling, leasing, renting, or delivering in the city of tangible personal property by a retail~~

sale as defined in this section, for use, storage, distribution, or consumption within this city. This term includes, but shall not be limited to, the following acts or methods of transacting business;

- ~~(1) Maintaining within the city, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, mobile vendor, or other place of business;~~
- ~~(2) Having within the city, employees, agents, or commissioned sales persons solicit business, deliver and install or assemble, or repair, service, or assist in the use of its products, or for demonstration or other reasons; or~~
- ~~(3) Owning, leasing, renting, or otherwise exercising control over real or personal property within the taxing jurisdiction.~~

(J) “Engaged in business in the city” means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the city. engaged in business in the city includes, but is not limited to, any one of the following activities by a person:

- (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 salesperson 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 salesperson 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 a taxing jurisdiction within a twelve month period by means other than a common carrier.**

~~(L) Farm closeout sale means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him or her in carrying on his or her farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his or her farming or ranching operations and is abandoning the said operations on the premises whereon those were previously conducted, such sale shall not be deemed a farm close-out sale within the meaning of this chapter.~~

(K) ~~(M)~~ Farm equipment means farm tractors, as defined in section 42-1-102(33), C.R.S., as amended, implements of husbandry, as defined in section 42-1-102(44), C.R.S., as amended, and irrigation equipment having a per-unit purchase price of at least \$1,000.00. Farm equipment also includes, regardless of the purchase price, attachments and bailing wire, binders, twine, and surface wrap used primarily and directly in any farm operation. Farm equipment does not include:

- (1) Vehicles subject to the registration requirements of section 42-3-103, C.R.S., as amended, regardless of the purpose for which such vehicles are used;
- (2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;
- (3) Maintenance and janitorial equipment and supplies; or

(4) Tangible personal property used in any activity other than farming, such as office equipment and supplies used in the sale or distribution of farm products, research, or transportation.

(L) ~~(N)~~ Farm operation means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:

- (1) Agricultural, viticultural, fruit, and vegetable products;
- (2) Livestock, as defined in section 39-26-102(5.5), C.R.S., as amended;
- (3) Milk;
- (4) Honey;
- (5) Poultry; and
- (6) Eggs.

~~(O) Finance Director~~ means the finance director of the city or such person's designee.

(M) ~~(O)~~ Finance director means the finance director of the City & County of Broomfield or such other person designated by the municipality; finance director shall also include such person's designee.

~~(P) Food~~ means food for domestic home consumption as defined in 7 U.S.C. sec. 2012(g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. sec. 2012(h), 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 or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin collecting food and snack devices on behalf of a vendor.

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

~~(Q) Internet access~~ means the cost of internet connection services provided by an internet service provider (ISP). Internet access does not mean the price paid for goods or services obtained from internet sales companies.

(O) ~~(Q)~~ "Internet access services" means services that provide or enable computer access by multiple users to the internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

(P) ~~(R)~~ 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. *Livestock* also means alternative livestock as defined under section 35-41.5-102(1), C.R.S., as amended. *Livestock* shall not mean a pet animal as defined under section 35-80-102(10), C.R.S., as amended.

(Q) ~~(S)~~ *Long-term lease and rental contracts* means the granting of a right to continuous possession or use for more than three years of any article of tangible personal property under a lease or contract.

~~(T)~~ *Manufacturing equipment* means machinery or machine tools used directly in manufacturing by a person engaged in manufacturing, compounding for sale, profit or use, any article, substance, or commodity.

(R) ~~(U)~~ *Manufacturing sales and purchases by manufacturers* means:

(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.

(2) As used in paragraph (1) above, 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 is used 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.

(3) Sales to manufacturers shall be documented as wholesale sales and such documentation shall include a valid resale license from the manufacturer, and the customer's state and local resale license number prominently located on the invoice.

(S) ~~(V)~~ *Medical supplies* means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician, glucose useable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a practitioner of the healing arts as part of professional services provided to an individual; and corrective eyeglasses, contact lenses, or hearing aids. Medical supplies shall not include items of tangible personal property used in the production, cultivation, consumption or other use of medical marijuana.

(T) ~~(W)~~ *Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways; and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo, but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways; and includes, but is not limited to, wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, or the digging of ditches.

(U) ~~(X)~~ *Motor vehicle* means the definition as set forth in section ~~39-22-516(2.5)(a)(HH)~~, **42-1-102(58)** C.R.S., as amended.

(V) ~~(Y)~~ *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 clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

(W) ~~(Z)~~ *Occasional sales* means retail sales of tangible personal property, including concessions, for fundraising purposes, if 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:

(1) The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve days, whether consecutive or not, during any one calendar year; or

(2) The funds raised by the charitable organization through these sales do not exceed \$25,000.00 of gross profit during any one calendar year.

(X) ~~(AA)~~ *Parts used for converting* means 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.

(Y) ~~(BB)~~ *Person* means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, 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.

(Z) ~~(CC)~~ *Precious metal bullion* means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

~~(DD)~~ *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 on rerun. 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.

(AA) ~~(DD)~~ *Pre-press 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, myler, 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 thereof. 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 in this definition.

(BB) "*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.

(CC) "*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, are placed on the label.

(DD) ~~(EE)~~ *Price or purchase price* means:

(1) The price to the consumer, exclusive of any direct tax imposed by the federal 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 time and place of the exchange, 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 this state, including, but not limited to, vehicles operating upon public highways, off-highway recreational vehicles, watercraft, and aircraft.

~~(2) 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 section 3-04-020, 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 telecommunication services. Nothing in this subparagraph (2) 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 telecommunication services.~~

(2) Price or purchase price includes:

- a. The amount of money received or due in cash and credits;
- b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business;
- c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or any other person reimburses the retailer for part of the purchase price and other media of exchange;
- d. 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 a note or other written evidence of debt is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price;
- e. Installation, delivery, and wheeling-in charges included in the purchase price and not separately stated;
- f. Transportation and other charges to effect delivery of tangible personal property to the purchaser;
- g. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires, and floor stock; and
- h. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all materials used, labor and service performed and the profit thereon.

(3) Price or purchase price shall not include:

- a. Any sales or use tax imposed by the ~~state~~ **State of Colorado** or by any political subdivision thereof;
- b. 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 **Colorado** Out-of-state trade-ins are not included in the purchase price;

- c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is included in the purchase price. This subparagraph does not include manufacturer coupons.

~~(FF) Residential fuel means all sales and purchases of electricity, coal, wood, gas, fuel, oil, or coke sold, but not for resale, to occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances, which provide light, heat, and power for such residences. For purposes of this subsection, gas includes natural, manufactured, and liquefied petroleum gas.~~

~~(EE) (GG) Retailer or vendor means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.~~ **means any person selling, leasing, 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; (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 the seller of building supplies, construction materials, or other tangible personal property.**

~~(FF) (HH) Retail sale~~ means all sales made within the city except wholesale sales.

~~(GG) (H) Sale or purchase~~ means the acquisition, for any consideration by any person, of tangible personal property, ~~or other taxable products or~~ taxable services that are sold, purchased, leased, rented, delivered, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services.

(1) The term purchase or sale includes capital leases, installment and credit sales, and property and services acquired by:

- a. A transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, **other taxable products or taxable services;**
- b. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services;
- c. Performance of taxable services; or
- d. Barter or exchange for other property or services, including coupons.

(2) The terms purchase and sale do not include:

- a. A division of partnership assets among the partners according to their interests in the partnership;
- b. ~~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;~~
- b. ~~e.~~ The transfer of assets of shareholders in the formation or dissolution of professional corporations;
 - c. ~~d.~~ The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
 - d. ~~e.~~ A transfer of a partnership interest;
 - f. ~~The transfer in a reorganization qualifying under section 368(a)(1) of the Internal Revenue Code of 1954, as amended;~~
 - g. ~~The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;~~
 - e. **The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;**
 - f. ~~h.~~ The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
 - g. ~~i.~~ **The transfer of assets from a parent corporation company to a subsidiary corporation company or corporations companies which is/are owned at least eighty percent by the parent corporation company, which transfer is solely in exchange for stock or securities of the subsidiary corporation company;**
 - h. ~~j.~~ **The transfer of assets from a subsidiary corporation company or corporations companies, which are owned at least eighty percent by the parent corporation company to a parent corporation company or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation of the subsidiary which received the assets;**
 - i. ~~k.~~ **The transfer of assets between parent and closely held subsidiary corporations, companies or between subsidiary corporations companies closely held by the same parent corporation company or between corporations companies which are owned by the same shareholders with identical percentages of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transfer corporation company at the time it acquired such assets; however, any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation company is taxable. to such an extent any transfer referred to in this paragraph (i) shall constitute a sale.** For the purposes of this subparagraph, a closely held subsidiary corporation is one in which the parent corporation company owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(3) Sale or sale and purchase also includes 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 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.

(4) Except as otherwise provided in this subsection (4), the sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this chapter. In connection with the transactions referred to in subparagraph (2)(i)(~~k~~) of this section, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subsection (4), the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer.

(HH) ~~(JJ)~~ *School* means a public educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, and having an enrollment of at least forty students.

(II) ~~(KK)~~ *Short-term lease and rental contracts* means when right to continuous possession or use for three years or less of any article of tangible personal property is granted under a lease or contract.

(JJ) ~~(LL)~~ *Software or computer software* means and includes any computer software in machine readable or human readable form, including, but not limited to, software contained on cards, tapes, discs, coding sheets, or other medium and including follow up maintenance provided with software purchase. Software includes downloaded software because such programs or data have a physical existence upon the device once downloaded, and software that has been modified, so long as the price of the modifications does not exceed fifty percent of the price of the unmodified software and excluding software created specifically for the user. For purposes of this definition, modification means actual programming specific to the customer, and the price of modifications shall not include training, installation or customer support but shall be limited to the actual programming or creation thereof specific to the customer.

~~(MM) *Tangible personal property* means corporeal personal property.~~

(KK) ~~(MM)~~ *Tangible personal property* means **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.**

(LL) ~~(NN)~~ *Tax* means 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.

~~(MM)~~ ~~(OO)~~ *Taxpayer* means any person obligated to collect and/or pay tax under the terms of this chapter.

~~(NN)~~ ~~(PP)~~ *Telecommunication 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. Telecommunication service includes, but is not limited to, basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication 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 non-transmission services, which constitute computer-processing applications used to act on the information to be transmitted. If not separately stated, bundled services will be taxed with telecommunication service.

~~(OO)~~ ~~(QQ)~~ *Therapeutic devices* mean devices, appliances, or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality. If such a 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 practitioner of the healing arts to qualify as a therapeutic device for purposes of this chapter. Therapeutic devices shall not include items of tangible personal property used in the production, cultivation, consumption or other use of medical marijuana.

~~(PP)~~ ~~(RR)~~ *Vendor fee* means a credit, as designated by the finance director, to be allowed against the tax due on timely filed sales tax returns. The amount of the credit, and any limitation per return, will be stated on the sales tax return as approved by the finance director.

~~(SS)~~ *Wholesaler* means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

~~(QQ)~~ ~~(SS)~~ ***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.**

~~(RR)~~ ~~(TT)~~ *Wholesale sale* means a sale by wholesalers to retail 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 chapter. This term includes sales of all pre-press preparation ~~printing~~ materials, as defined by subsection ~~(AADD)~~ of this section, 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 this city. Documentation of a wholesale sale shall include a valid resale certificate from the customer, and the customer's state and local resale license number prominently located on the invoice.

Section 3. Section 3-04-090 Property and services taxed Subsection (C) of the Broomfield Municipal Code is amended to read as follows:

(C) Upon telecommunication services, whether furnished by public or private corporations or enterprises, for all intrastate telecommunications services as defined in subsection 3-04-070(~~PPNN~~) of this chapter.

Section 4. Section 3-04-100 Exemptions Subsections (F) (V), and (X) of the Broomfield Municipal Code is amended as follows:

(F) ~~All sales of drugs dispensed in accordance with a prescription;~~ **Prescription drugs for humans**; all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician; all sales of glucose useable for treatment of insulin reactions; all sales of urine- and blood-testing kits and materials; all sales of insulin measuring and injecting devices, including hypodermic syringes and needles; all sales of prosthetic devices; all sales of wheelchairs and hospital beds; all sales of drugs or materials when furnished by a doctor as part of professional services provided to a patient; and all sales of corrective eyeglasses, contact lenses, or hearing aids;

(V) All sales of food, as defined in 7 U.S.C. sec. 2012 (~~g-k~~), as amended, which is purchased with food stamps. Also see subsection 3-04-070(~~PN~~) under definitions;

(X) All sales and purchases of food, as defined in section 3-04-070 (~~PN~~) by or through vending machines;

Section 5. Section 3-04-420 Investigations, audits, and hearings, of the Broomfield Municipal Code is hereby amended as follows:

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, whether licensed under this chapter or not, the finance director may hold investigations, including audits and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda of any such person and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge of transactions involved and may take testimony and proof of the information. Audits may be performed by the finance director or referred to a ~~contracted~~ **contract** auditor. The finance director shall have the power to administer oaths to such persons. Every hearing before the finance director shall be held in the city.

Section 6. This ordinance shall be effective seven days after publication following final passage.

INTRODUCED AND APPROVED after first reading on February 13, 2018, and ordered published in full.

INTRODUCED A SECOND TIME and approved on March 13, 2018, as amended, and further ordered published in full.

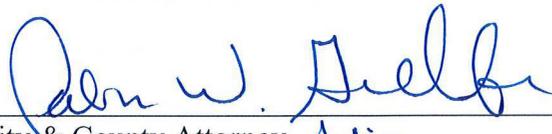
THE CITY AND COUNTY OF BROOMFIELD,
COLORADO


Mayor




City & County Clerk, Deputy

APPROVED AS TO FORM:


City & County Attorney *Acting*

First Publication: February 18, 2018

Second Publication: March 18, 2018

ORDINANCE NO. 2063

AN ORDINANCE AMENDING SECTION 3-08-060(D) OF CHAPTER 3-08 OF THE BROOMFIELD MUNICIPAL CODE TO ELIMINATE INTEREST ON TAX REFUNDS

WHEREAS, the City and County of Broomfield seeks to be consistent with other home rule self-collecting municipalities and eliminate the payment of interest on tax refunds for use tax.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. Section 3-08-060 Construction and building materials; method of payment Subsection (D) of the Broomfield Municipal Code is amended to read as follows:

(D) Interest on ~~either a tax refund or on~~ a tax deficiency shall be computed from the date of issuance of the certificate of occupancy. Interest shall be at the legal rate established by section 5-12-101, C.R.S.

Section 2. This ordinance shall be effective seven days after publication following final passage.

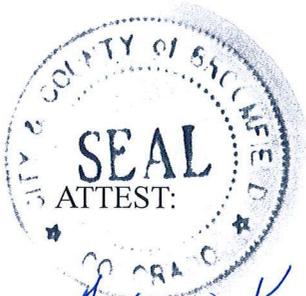
INTRODUCED AND APPROVED after first reading on February 13, 2018, and ordered published in full.

INTRODUCED A SECOND TIME and approved on March 13, 2018, and further ordered published.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO



Mayor





City & County Clerk, Deputy

APPROVED AS TO FORM:



City & County Attorney *Acting*

First Publication: February 22, 2018

Second Publication: March 18, 2018