

## CHAPTER 4

### ARTICLE 3

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Supp. #4, 1982	See Ord. #4-1981	Adopted March 23, 1981
Supp. #5, 1982	See Ord. #10-1982	Adopted June 14, 1982
Supp. #26, 1986	See Ord. #12-1984	Adopted November 26, 1984

## CHAPTER 4

### ARTICLE 3

#### SALES AND USE TAX

(NOTE: The provisions of this Article 3 are derived from Ordinances No. 67 of 1966, 4 of 1981, and 10 of 1982 unless otherwise indicated.)

#### 4-3-1 Purpose

The purpose of this Article is to impose a sales tax upon the sale at retail of tangible personal property and the furnishing of certain services in the Town of Grand Lake, Colorado, pursuant to the authority granted to incorporated towns of the State of Colorado by Article 2 of Title 29, Colorado Revised Statutes, 1973, as amended. This Article shall be so construed and interpreted as to effectuate the general purpose of making it uniform with the sales tax of the State of Colorado, levied by Article 26 of Title 39, Colorado Revised Statutes, 1973, as amended.

#### 4-3-2 Definitions

For the purpose of this Ordinance, the definition of words herein contained shall be as said words in §39-26-102, Colorado Revised Statutes, 1973, as amended, and said definitions are incorporated herein by this reference.

#### 4-3-3 Licenses

- (a) It shall be unlawful for any person to engage in the business of selling tangible personal property at retail, or to furnish certain services as herein specified, without first having obtained a license therefor, which license shall be granted and issued by the Town Clerk, and shall be in force and effect until the thirty-first day of December of the year in which it is issued, unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such license, the name of such business and location, and such other facts as the Town Clerk may require.
- (b) It shall be the duty of each such licensee on or before January first of each year during which this Ordinance remains in effect, to obtain a renewal thereof if the licensee remains in retail business or liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the Town Clerk to refuse such renewal except revocations for cause of licensee's prior license.

- (c) The Board of Trustees shall by resolution, set the annual fee for sales tax licenses.
- (d) In case business is transacted at two (2) or more separate places by one person, a separate license for each place of business shall be required.
- (e) Each license shall be numbered and shall show the name, residence and place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.
- (f) Any license may be revoked for cause as provided in §39-26-103, Colorado Revised Statutes, 1973, as amended, which provision is incorporated herein by this reference.
- (g) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Article.
- (h) Any person engaged in the business of selling tangible personal property at retail, or the furnishing of certain services as herein specified, without having first secured a license therefore as provided in this Article, shall be guilty of a violation of this Article.

#### 4-3-4 Property and Services Taxed

- (a) There is hereby levied and there shall be collected and paid a sales tax in the amount as in this Article provided, upon the sale at retail of tangible personal property and the furnishing of certain services, as provided in “The Emergency Retail Sales Tax Act of 1935”, set forth in Article 26 of Title 39, Colorado Revised Statutes, 1973, as amended, which provisions are incorporated herein by this reference.
- (b) There is hereby levied and there shall be collected and paid a sales tax in the amount as in this Article provided, upon the sale at retail of tangible personal property, on the sales of food and purchases of machinery or machine tools, and the furnishing of services on sales and purchases of electricity, coal, gas, fuel oil and coke for domestic and commercial consumption.
- (c) The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 25 of Title 39, Colorado Revised Statutes, 1973, as amended.
- (d) The gross receipts from sales subject to the tax imposed herein, shall include delivery charges when such charges are subject to the State Sales and Use Tax imposed by Article 26 of Title 39, Colorado Revised Statutes, 1973, as amended, regardless of the place to which delivery is made.

#### 4-3-5 Exemptions

- (a) There shall be exempt from taxation under the provisions of this Article, all of the tangible personal property and services which are exempt under the provisions of “The Emergency Retail Sales Tax Act of 1935”, as set forth in Article 26, Title 39, Colorado Revised Statutes, 1973, as amended, which exemptions are incorporated herein by this reference, except the exemption allowed by Section 39-26-114 (11),

Colorado Revised Statutes, 1973, for purchases of machinery or machine tools, the exemption of sales and purchases of electricity, coal, gas, fuel oil and coke as provided in Section 39-26-114 (1) (a) (XXI), Colorado Revised Statutes, 1973, and the exemption for sales of food specified in Section 39-26-114 (1) (a) (XX), Colorado Revised Statutes, 1973.

- (b) All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall exempt from sales tax when such sales meet both of the following conditions:
  - (1) The purchase is a nonresident of, or has its principal place of business outside of the Town; and
  - (2) Such tangible personal property is registered or required to be registered outside the limits of the Town under the laws of the State of Colorado.

#### 4-3-6 Amount of Tax and Schedule

- (a) There is hereby imposed upon all sales of tangible personal property and the furnishing of certain services, as specified in Section 4 of this Article, a four percent (4%) sales tax upon the sale at retail of tangible personal property and the furnishing of certain services as provided in “The Emergency Retail Sales Tax Act of 1935” set forth in Article 26 of Title 39, Colorado Revised Statutes 1973, as amended, and any amendment thereto enacted before or after the effective date of this Article, which provisions are incorporated herein by this reference.
- (b) The imposition of the tax on the sale at retail of tangible personal property and the furnishing of certain services subject to this tax shall be in accordance with schedules set forth in the Rules and Regulations of the Department of Revenue of the State of Colorado and in accordance with the regulations enacted by separate Resolution of the Board of Trustees of the Town of Grand Lake, Colorado.

#### 4-3-7 General Provisions

- (a) For the purposes of this Article, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town.
- (b) In the event a retailer has no permanent place of business in the Town, or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax imposed by this Article shall be determined by the provisions of Article 26 of Title 39, Colorado Revised Statutes, 1973, as amended, and by the rules and regulations promulgated by the Department of Revenue of the State of Colorado.
- (c) Notwithstanding any other provision of this Article, the value of construction and building materials on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from the sales tax imposed herein

if the materials are delivered by the retailer or his agent to a site within the limits of the Town of Grand Lake.

#### 4-3-8 Collection, Administration and Enforcement

- (a) The collection, administration and enforcement of the sales tax imposed by this Article shall be performed by the Director of Revenue of the State of Colorado in the same manner as the collection, administration and enforcement of the Colorado State Sales Tax. Accordingly, the provisions of Articles 26 and 21 of Title 39, and Article 2 of Title 29, Colorado Revised Statutes, 1973, as amended, and all rules and regulations promulgated by the Director of Revenue pertaining to such collection, administration and enforcement, are incorporated herein by this reference.
- (b) At the time of making his monthly return of the tax, as required by this Article, every retailer shall be entitled to subtract from the tax so remitted a sum equal to three and one-third per cent (3 1/3%) of said tax as his fee, said fee to be known as the "Vendor's Fee".
- (c) If said retailer shall be delinquent in remitting said tax, he shall forfeit the three and one-third per cent (3 1/3%) provided in subsection 8(b), unless good cause be shown for such delinquent remittance.

#### 4-3-9 Continuation of Sales Tax

This Article codifies and continues the sales taxes which were adopted by Ordinance No. 67, Ordinance No. 10, Series 1973, and Ordinance No. 21, Series 1975, which Ordinances were approved by the qualified electors of the Town in accordance with State law.

#### 4-3-10 Amendments

The Board of Trustees by a majority vote, may amend, alter, or change this Article, except as to the four percent (4%) rate of tax herein imposed, and such amendment, alteration or change need not be submitted to the electors of the Town for their approval.

#### 4-3-11 Penalty

Any person convicted of violating any provisions of this Article shall be punished by a fine of not to exceed Three Hundred Dollars (\$300.00), or by imprisonment for not more than ninety (90) days, or both such fine and imprisonment.

#### 4-3-12 Credit Sales

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, chattel mortgage or conditional sale, there shall be paid upon each payment upon the account of purchase price, that portion of the total tax which the amount paid bears to the purchase price. The Director of Finance may authorize a retailer doing business, wholly or partly on a credit basis, to make returns on the basis of cash actually received. Thereafter the retailer shall make return and pay taxes on that basis until further order of the Director of Finance. Sections 4-

3-5 to 4-3-13 shall not operate to relieve from the tax, installment or credit business done during the operations of Sections 4-3-1 to 4-3-29 but realize upon thereafter.

#### 4-3-13 Excess Tax-Remittance

If any vendor, during any reporting period, shall collect as a tax an amount in excess of three percent of his total taxable sales, he shall remit to the Director of Finance the full net amount of the tax herein imposed and also such excess. The retention by the retailer or vendor of any excess of tax collections over three percent of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the Director of Finance the full amount required to be remitted by the provisions of this Ordinance, is declared to be unlawful and a violation of this Article.

#### 4-3-14 Exemptions and Disputes

There shall be exempt from taxation under the provisions of this Article the following:

- (a) All sales to the United States Government, to the State of Colorado, its departments and institutions, and political subdivisions thereof in their governmental capacities only, and to the Town of Grand Lake.
- (b) All sales made to religious or charitable corporations in the conduct of their regular religious or charitable functions and activities.
- (c) All sales which the Town of Grand Lake is prohibited from taxing under the Constitution or laws of the United States or the State of Colorado or the charter or the Code of the Town of Grand Lake.
- (d) All sales of cigarettes.
- (e) All sales of drugs dispensed in accordance with a prescription and all sales of prosthetic devices.
- (f) All sales and purchases of commodities and services taxed under the provisions of Section 4-3-2 (t) to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or rooms or accommodations for a period of at least thirty consecutive days during the calendar year or preceding year.
- (g) All commodities on which there has been paid a Colorado Motor Fuel Tax or Special Fuel Tax, which is not subject to refund, prescribed by the Colorado Motor Fuel Tax Act of 1933, and amendments thereto.
- (h) Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Article, nevertheless, the seller shall collect and the purchaser shall pay such tax, and the seller shall thereupon issue to the purchaser a receipt or certification, on forms prescribed by the Director of Finance, showing the names of seller and purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of

exemption. The purchaser thereafter may apply to the Director of Finance for a refund of such taxes, and it shall then be the duty of the Director of Finance to determine the question of exemption, subject to review of the Courts as provided in Section 4-3-24.

- (i) All sales and purchases of meat cattle, sheep, lambs, swine and goats, all sales and purchases of mares and stallions for breeding purposes, and all farm close-out sales shall be exempt from taxation under the terms of this Article.
- (j) All sales and purchases of feed for livestock or poultry, and all sales and purchases of seeds shall be exempt from taxation under the terms of this Article.
- (k) Every vendor vending individual items of personal property through coin-operated vending machines, shall be exempt from the provisions of Section 4-3-5, but nevertheless, such vendor shall pay a sales or use tax of three percent (3%) on the personal property sold in excess of ten cents so vended in the coin-operated machines unless the sale shall be otherwise exempt under the provisions of this Article.
- (l) All sales and purchases of straw and other bedding for use in care of livestock shall be exempt from taxation under the terms of this Article.
- (m) All sales of telephone and telegraph services, gas and electric services, coal, fuel oil, gas and other petroleum products, whether furnished by municipal, private or public corporations or enterprises, and whether sold for domestic or commercial consumption shall be exempt from taxation under the terms of this Article.
- (n) All building or construction materials purchased in the Town by contractors for use or consumption outside of the Town shall be exempt from taxation under the terms of this Article. Such exemption shall apply only to those contractors who shall first exhibit to the retailer or vendor a tax exemption certificate as issued by the Director of Finance.

#### 4-3-15 Refunds

- (a) A refund shall be made, or credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as in this Article provided. Such refund shall be made by the Director of Finance after compliance with the following conditions precedent. Applications for refund must be made within sixty days after the purchase of goods whereon an exemption is claimed, and, must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller, and, be made upon such forms as shall be prescribed and furnished by the Director, which forms shall contain such information as said Director may prescribe.
- (b) Upon receipt of such application, the Director shall examine the same with all due speed and shall give notice to the applicant by order in writing of his decisions thereon. Aggrieved applicants, within ten days after such decision is mailed to them, may petition the Director for a hearing on the claim in the manner provided in Sections 4-3-23 and 4-3-24. The right of any person to refund under this Article

shall not be assignable and, except as provided in this Section, such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof. Any applicant for refund under the provisions of this Section, or any other person who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a violation of this Article.

- (c) A refund shall be made or a credit allowed by the Director of Finance to any person entitled to any exemption where such person establishes that a tax was paid by another on a purchase made on behalf of such person, and, that refund has not been granted to the person making the purchase, and that the person entitled to exemption paid or reimbursed the purchaser for such tax.
- (d) Such application for refund under this Section shall be made within three years after the date of purchase and shall be made on forms prescribed and furnished by the Director of Finance, which forms shall contain, in addition to the foregoing information, such pertinent data as the Director of Finance shall prescribe. Upon receipt of such application and proof of the matters contained therein the Director shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within ten days after such decision is mailed to them, may petition the Director for a hearing on the claim in the manner provided in Sections 4-3-23 and 4-3-24. Any applicant for refund under the provisions of this Section or any other person who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a violation of this Article.
- (e) Claims for tax moneys paid in error or by mistake may be processed for refund in accordance with the Director's regulations under paragraph (2) of this Section; provided, that the proceeds of any such claim for refund shall first be applied by the Director to any tax deficiencies or liabilities existing against the claimant before allowance of such claim by the Director; and provided further, that if such excess payment of tax moneys in any period is discovered as a result of audit by the Director and deficiencies are discovered and assessed against the taxpayer as a result of such audit, such excess moneys shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.
- (f) If any person be convicted under the provisions of this Article, such conviction shall be "prima facie" evidence that all refunds received by such person during the current year were obtained unlawfully and the Director of Finance is hereby empowered and directed to bring appropriate action for recovery of such refunds. A brief summary statement of the above mentioned penalties shall be printed on each form application for refund.
- (g) The burden of proving that sales, services and commodities, on which tax refunds are claimed, are exempt from taxation under Sections 4-3-1 to 4-3-29, or were not at retail, shall be upon the one making such claim under such reasonable requirements of proof as the Director of Finance may prescribe. Should the applicant for refund be aggrieved at the final decision of the Director, he may proceed to have the same reviewed by the Courts in the manner provided for review of other decisions of the

Director as provided in Section 4-3-23; except that such reviews shall be in the District Court in and for the County of Grand, State of Colorado.

#### 4-3-16 Return Confidential

- (a) Except in accordance with judicial order or as otherwise herein provided, the Director of Finance, his agents, clerks, and employees shall not divulge any information gained by them from any return filed under the provisions of this Article except to the Colorado Department of Revenue. The officials charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceedings under the provisions of this Article to which he is a party, or on behalf of any party to any action or proceeding under the provisions of this Article when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the Court may require the production of, and may admit in evidence, as much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein contained shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed in connection with his tax, nor to prohibit the publication of particular reports or returns and the items thereof, or the inspection by the Town Attorney or other legal representative of the Town of the report or return of any person who shall bring an action or proceeding as contemplated or has been instituted under this Article. Reports shall be preserved for three years and thereafter until the Director of Finance orders them destroyed.
- (b) Nothing contained herein shall prohibit the Director of Finance, his agents, clerks or employees from divulging information contained in returns filed under this Article to the Director of the State Department of Revenue, State of Colorado, or his duly authorized representatives for the purposes of facilitating the collection of the tax provided for in Title 39, Article 26, Part I, C.R.S. 1973 as amended.

#### 4-3-17 Interest on Deficiency

As soon as practicable after the return is filed, the Director of Finance shall examine it, and if it then appears that the correct amount of tax to be remitted is greater or less than shown in the return to be due, the tax shall be recomputed. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same person. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate of one-half of one percent per month from the time the return was due, shall be paid by the vendor ten days after written notice and demand to him from the Director of Finance.

#### 4-3-18 Deficiency

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge, attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Director of Finance, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before such Court.

#### 4-3-19 Depositions

The Director of Finance or any party in an investigation or hearing before the Director of Finance, may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in Courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

#### 4-3-20 Record of Sales

It shall be the duty of every person engaging or continuing in business in the Town, for the transaction of which a license is required under this Article to keep and preserve suitable records of all sales made by him, and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under this Article. It shall be the duty of every such person to keep and preserve for a period of three years, all invoices of goods and merchandise purchased for resale, and all such books, invoices and other records shall be open for examination at any time by the Director of Finance or his duly authorized agent.

#### 4-3-21 Tax Lien

The tax imposed by this Article shall be a first and prior lien upon the goods and business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature, excepting any lien for the non-payment of the State of Colorado sales or use tax. Any retailer who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return as provided in Sections 4-3-1 to 4-3-29 within ten days after the date he sold his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the Director of Finance showing the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase of a business or stock money as above provided and the taxes shall be due and unpaid after the ten day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock or goods or business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement by purchase, foreclosure sale, or otherwise, takes the same subject to the lien for any delinquent tax owed by such merchant, and shall be liable for the payment for all delinquent sales taxes of such prior owner, not however, exceeding the value of the property so taken or acquired.

#### 4-3-22 Recovery of Taxes, Penalty and Interest

- (a) All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain the public money, the property of the Town of Grand Lake, in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the Town of Grand Lake until paid to the Director of Finance, and for failure to so pay the Director of Finance, such retailer shall be punished as provided by law.

- (b) If a person neglects or refuses to make a return in payment of the tax as required by this Article, the Director of Finance shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period or periods of which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess in addition thereto, a penalty equal to ten percent thereof, together with interest on such delinquent taxes at a rate of one percent per month from the date when due. Promptly thereafter, the Director of Finance shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice must be served personally or by certified mail. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Director of Finance ten days after the date of service of the notice or the date of mailing by certified mail; provided, however, that within said ten days such delinquent taxpayer may petition the Director of Finance for a revision or modification of such assessment, and, within such ten day period, shall furnish the Director of Finance the facts and correct figures showing the correct amount of such taxes. Such petition shall be submitted either in writing or orally, and shall be given under the oath of said taxpayer. Thereupon the Director shall modify such assessment in accordance with the facts submitted, which facts he deems correct. Such assessment shall be considered the final order of the Director of Finance, and may be reviewed by Writ of Certiorari as provided in this Article, provided that the taxpayer gives written notice to the Director of Finance of such intention within five days after receipt of the final order of assessment.
- (c) If any taxes, penalty or interest imposed by this Article and shown due by returns filed by taxpayer, or as shown by assessments duly made as provided herein, are not paid within five days after the same are due, the Director of Finance shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the Town of Grand Lake claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to any lien for the non-payment of the State of Colorado sales and use tax, pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as herein provided, on property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer. Said notice shall be on forms prepared by the Director of Finance, and shall be verified by him or his duly qualified deputy or agent and may be filed in the office of the Clerk and Recorder of any county in the State in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes are due and unpaid, whether such notice be filed or not, the Director of Finance may issue a warrant directed to the sheriff of any county of the State, commanding him to levy upon, seize, and sell sufficient of the real and personal property of the tax debtor found within the county, for the payment of the amount due, together with interest, penalties and costs, as may be provided by law, subject to valid pre-existing claims or liens.
- (d) The sheriff shall forthwith levy upon sufficient property of the taxpayer, or any property used by such taxpayer in conducting his retail business, and said property so levied upon shall be sold in all respects with like effect and in the same manner

as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrant, as are now allocated by law for similar services.

- (e) Any lien for taxes as shown on the records of the county clerks and recorders as herein provided, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Director of Finance in the same manner as mortgages and judgments are released.
- (f) The Director of Finance may also treat any such taxes, penalties or interest due and unpaid as a debt due to the Town from the vendor. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the Director of Finance may recover at law the amount of such taxes, penalties and interest in such County or District Court of the county wherein the taxpayer resides, or has his principal place of business, having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the Director of Finance, as herein provided, shall be prima facie proof of the amounts due. Such action may be an action in attachment, and Writs of Attachment may be issued to the sheriff, and in such proceeding no bond shall be required of the Director of Finance, nor shall any sheriff require of the Director of Finance an indemnifying bond for executing the Writ of Attachment, or Writ of Execution upon any judgment entered in such proceedings; and the Director of Finance may prosecute appeals or Writs of Error in such cases without the necessity of providing bond therefor. It shall be the duty of the Town Attorney when requested by the Director of Finance, to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies provided in this Article.
- (g) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the Town of Grand Lake may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein and in any such action service of summons upon the Director of Finance shall be sufficient service and binding upon the Town of Grand Lake.
- (h) The Director of Finance is hereby authorized to waive, for good cause shown, any penalty assessed as in this Article provided, and interest imposed in excess of six percent per year shall be deemed a penalty.

#### 4-3-23 Taxpayers Petition for Hearing

If any person having made a return and paid the tax provided by this Article feels aggrieved by the assessment made upon him by the Director of Finance, he may apply to the Director by petition in writing within ten days after the notice is mailed to him for hearing and correction of the amount of tax so assessed, in which petition he shall set forth the reasons why such hearing should be granted and the amounts by which such tax should be reduced. The Director of Finance shall notify the petitioner in writing of the time and place fixed by him for such hearing. After such hearing, the Director shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner.

#### 4-3-24 Decisions of Director

- (a) Every decision of the Director of Finance shall be in writing and notice thereof shall be mailed to the vendor within ten days, and such decisions shall become final upon the expiration of thirty days after notice of such decision shall have been mailed to the vendor, unless proceedings are taken within said time for review thereof as provided in this section.
- (b) The District Court in and for the County of Grand, State of Colorado, shall have original jurisdiction in proceedings to review all question of law and fact determined by the Director of Finance in administering the provisions of this Article by Writ of Certiorari to the Director of Finance.
- (c) Before making application to the District Court for a Writ of Certiorari, the party making such application shall file with the Director of Finance a bond in twice the amount of the taxes, interests and other charges audited and stated in the determination and decisions of the Director, with surety as is now provided in other cases on appeal, or at his option may deposit lawful money of the United States.

#### 4-3-25 Notices Sent by Certified Mail

- (a) All notices required to be given to the retailer or vendor, under the provisions of this Article, shall be in writing and if mailed postpaid by certified mail, return receipt requested, to him at his last known address shall be sufficient for the purposes of this Article.
- (b) Every hearing before the Director of Finance shall be held in the Town of Grand Lake, Colorado.

#### 4-3-26 License and Tax Additional

The license and tax imposed by this Article shall be in addition to all other licenses and taxes imposed by law, except as herein otherwise provided.

#### 4-3-27 Violations

It shall be unlawful for any retailer or vendor to refuse to make any return provided to be made in this Article or to make any false or fraudulent return or false statement on any return, or fail and refuse to make payment to the Director of Finance of any taxes collected or due the Town, or in any manner evade the collection and payment of the tax, or any part thereof, or for any person or purchaser to fail or refuse to pay such tax, or evade the payment therefore, to aid or abet another in any attempt to evade the payment of the tax. In addition to the foregoing, any person who shall knowingly and willfully swear to or verify any false statement shall be guilty of the offense of perjury and on conviction thereof, shall be punished in the manner provided by law.

#### 4-3-28 Purpose of Use Tax

The purpose of this Article is to raise revenue to pay for and operate municipal services, and provide a complimentary tax to the Town sales tax. The taxes imposed in this Article are a use tax on building and construction materials which are purchased outside the Town of Grand Lake for use, storage or consumption within the Town; and a similar use tax imposed on motor vehicles, on which registration is required, purchased outside the Town by Town residents for use, storage or consumption within the Town.

#### 4-3-29 Definitions

For the purpose of this Article, the definition of words herein contained shall be as said words are defined in Section 39-26-102 and Section 39-26-201, C.R.S., 1973, as amended, and said definitions are incorporated herein by this reference.

#### 4-3-30 General Fund Revenues

All funds received pursuant to this Ordinance shall be deposited in to the Town's general fund.

#### 4-3-31 Application and Exemptions

In no event shall the use tax imposed by this Article extend or apply to the following:

- a. Storage, use or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by this Town;
- b. Storage, use or consumption of any tangible personal property purchased for resale in this Town either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;
- c. Storage, use or consumption of any tangible personal property brought into this Town by a nonresident thereof for his own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into this State by a nonresident to be used in the conduct of a business in this State;
- d. To the storage, use or consumption of tangible personal property by the United States government or the State of Colorado, in its institutions or political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;
- e. To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or 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;

- f. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another town, city or county equal to or in excess of that imposed by this Ordinance. A credit shall be granted against the use tax imposed by this Ordinance with respect to a person's storage, use or consumption in this Town, of tangible personal property purchased by him elsewhere. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of another town, city or county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Ordinance.
- g. To the storage, use or consumption of tangible personal property and household effects acquired outside of this Town and brought into it by a nonresident acquiring residency;
- h. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of this Town and he purchased the vehicle outside of this Town for use outside this Town and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of this Town;
- i. To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of this use tax;
- j. To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to the effective date of this use tax ordinance.
- k. "Notwithstanding any other language contained in this Chapter, no use tax shall apply or be charged against the storage of construction and building materials."

#### 4-3-32 Building and Construction Use Tax Imposition – Amount

There is imposed on the privilege of storing, using or consuming any construction and building materials of every kind and form purchased outside this Town for use, storage or consumption within this Town a use tax of four percent (4%) of the retail purchase price of the said building and construction materials.

#### 4-3-33 Payment Requirements and Refunding Procedures for Building and Construction Use Tax

The use tax imposed by Section 4-3-32 of this Article shall be paid by estimate through payment to the Town Clerk of any amount equal to 4% of 50% of the total cost of the project in which the taxable personal property is used as indicated on the building permit application, and shall be paid at the time of application of such building permit. Provided, however, the Town shall refund any overpayment of such tax without interest upon presentation of evidence of actual purchase made. The Town Clerk will advise the

applicant of the building permit on the manner and method of refund at the time the use tax is paid. The applicant of the building permit will have thirty (30) days from the time the Town or its authorized representative has issued the Certificate of Occupancy or equivalent document signifying final inspection for the work done under the building permit in which to present to the Town Clerk the evidence of actual purchases made. At the end of said thirty (30) days, and without further notice to the applicant of the building permit, the Town Clerk shall cause any and all use tax monies not refunded to this applicant to be transferred to the General Fund of the Town.

#### 4-3-34 Motor Vehicle Use Tax Imposition – Amount

There is imposed on the privilege of storing, using or consuming any motor vehicle on which registration is required, purchased outside of this Town for use, storage or consumption within this Town, a use tax of four percent (4%) of the retail purchase price of said motor vehicle.

#### 4-3-35 Payment Prerequisite to Registration and Issuance of Title

No registration shall be made of any motor vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Colorado Department of Revenue or its authorized agents, until any tax due upon the use, storage or consumption thereof pursuant to this Article has been paid.

#### 4-3-36 Collection

The use tax imposed by the Section 4-3-34 shall be collected by the authorized agent of the Colorado Department of Revenue in the county in which the purchaser resides.

#### 4-3-37 Proceeds – Payment by County to Town – Agreement

The proceeds of the use tax imposed by Section 4-3-34 of this Article shall be paid to the Town periodically in accordance with an agreement entered by and between the authorized county agent of the Colorado Department of Revenue.

#### 4-3-38 Administration and Enforcement Agreements Authorized

The Mayor and Town Clerk are empowered to enter into and execute on behalf of the Town any agreements necessary for the administration and enforcement of this Article in accordance with the provisions of Title 29-2-106(3)(b) C.R.S., 1973 as amended.

#### 4-3-39 Monthly Return – Collection

Every person subject to the provisions of Sections 4-3-32 or 4-3-34 of this Article who in the conduct of a business, uses, stores or consumes any construction or building materials, or motor vehicles on which registration is required, purchases outside the Town of Grand Lake for use, storage or consumption within the Town of Grand Lake who has not paid the use tax imposed by this Article, shall before the twentieth day of each month make a return and remit the tax herein imposed, to the Town Clerk or her authorized agent for the preceding calendar month on forms prescribed by her, showing in detail the subject tangible

personal property stored, used or consumed by said person within the Town of Grand Lake during the preceding calendar month and on which the said use tax has not been paid.

Every person subject to the provisions of Sections 4-3-32 or 4-3-34 of this Article, but not in the conduct of business, uses, stores or consumes any construction or building material, or motor vehicles on which registration is required, purchased outside the Town of Grand Lake for use, storage or consumption within the Town of Grand Lake, and who has not paid the use tax imposed by this Article to a retailer or other appropriate legal entity, shall make a return and remit the tax annually to the Town Clerk or her authorized agent, at the time Colorado income tax returns are due for such year.

#### 4-3-40 Violation – Penalty

Any person who shall violate any of the provisions of this Article shall be guilty of a violation and upon conviction shall be punishable by a fine of not to exceed \$300.00 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

#### 4-3-41 Effective Date of Use Tax – Amendments

Upon adoption of this Article by the Board of Trustees of the Town of Grand Lake it shall become effective January 1, 1983, and the tax imposed shall be collected on all taxable sales from and after that date. The Board of Trustees, by a majority vote, may amend, alter or change this Article, except as to the 4% rate of tax herein imposed, and such amendment, alteration or change need not be submitted to the electors of the Town for their approval.

#### 4-3-42 Severability

If any provisions of this Article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Article which can be given effect without the invalid provision or application, and to this end provisions of this Article are declared to be severable.