

ORDINANCE NO. 651

AN ORDINANCE AMENDING ORDINANCE NUMBERS 338 and 507, SALES AND USE TAX ORDINANCE OF THE TOWN OF BERTHOUD.

WHEREAS, there have been numerous statutory changes in the sales and use tax provisions and it is necessary to update the sales and use tax ordinances of the Town of Berthoud.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO:

ORDINANCES 338 and 507 are hereby amended to read as follows:

Section 1. Sales Tax:

A. Definitions: For the purposes of this article the definition of the words herein contained shall be as said words are defined in Sections 39-26-102 and 39-26-201, Colorado Revised Statutes, (C.R.S.), as they currently exist or may hereafter be amended, and the definitions are incorporated in this ordinance by specific reference.

B. General Provisions:

(1) There is imposed on the sale of tangible personal property at retail or the furnishing of services as provided in Section 29-2-105(1)(d), C.R.S., a sales tax equal to three percent (3%) of the gross receipts (the "sales tax"). The tangible personal property and services taxable under this ordinance shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and subject to the same exemptions as those specified in Section 39-26-114, C.R.S.; provided that the exemption for the sales of food as defined in Section 39-26-102(4.5), C.R.S., pursuant to Section 39-26-114(1)(a)(XX), C.R.S.; and, the exemption for sales of electricity, coal, wood, gas, fuel oil or coke sold to occupants of residences pursuant to Section 39-26-114(1)(a)(XXI), C.R.S., shall not apply to the sales tax, and the sale of such items is expressly made taxable under this ordinance. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue. If any vendor, during any reporting period, shall collect as the sales tax an amount in excess of the amount of the sales tax imposed by this ordinance, he shall remit to the Executive Director the full amount of the sales tax imposed in this ordinance and also such excess.

a. Although the sale of food is subject to the taxation, no sales or use tax shall apply to the sale of

food purchased with food stamps. Food, for this purpose is defined as provided in 7 U.S.C. Section 2012(g) as such section exists on October 1, 1987 or is thereafter amended.

b. Although the sale of food is subject to the taxation, no sales or use tax shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants and children. Food, for this purpose defined as provided in 42 U.S.C. Section 1786, as such section exists on October 1, 1987 or si thereafter amended.

(2) For the purpose of this sales tax ordinance, 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. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the town, or has more than one place of business, the place at which the retail sales are consummated for the purpose of the sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the Department of Revenue.

(3) The sales tax shall not apply to the sale of construction and building materials if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the town evidencing that a local use tax has been paid or is required to be paid.

(4) The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.

(5) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:

(i) The purchaser is a nonresident of, or has his principal place of business outside the limits of the town; and

(ii) Such personal property is registered or required to be registered outside the limits of the town under the laws of the state.

(6) The sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services



if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the rate provided in this ordinance. A credit shall be granted against the sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the rate provided in this ordinance.

C. Sales Tax Collection: The collection, administration, and enforcement of the sales tax shall be performed by the Executive Director of the Department of Revenue of the state (Executive Director) in the same manner as the collection administration and enforcement of the Colorado states sales tax. Unless otherwise provided by Article 2 of Title 29, C.R.S., the provisions of Article 26 of Title 39, C.R.S., shall govern the collection, administration and enforcement of the sales tax.

D. Sales Tax Vendor's Fees: The vendor shall be entitled as collection agent for the town to withhold an amount equal to three and one-third percent of the total amount to be remitted by the vendor to the Executive Director each month to cover the vendor's expense in the collection and remittance of the sales tax. If any vendor is delinquent in remitting the sales tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain any amounts to cover expenses in collecting and remitting the sales tax, and an amount equivalent to the full amount of the sales tax imposed by this ordinance shall be remitted to the Executive Director by any such delinquent vendor.

## Section 2. Use Tax:

A. Definitions: For the purposes of this ordinance, the words contained herein shall have the meanings set forth in Sections 39-26-102 and 39-26-201, Colorado Revised Statutes (C.R.S.), as they currently exist or may hereafter be amended, and the definitions are incorporated in this ordinance by specific reference.

B. Use Tax Imposed: There is imposed and there shall be paid and collected a use tax upon the privilege of using or consuming within the town of Berthoud any construction and building materials purchased at retail and for the privilege of storing, using or consuming in the town motor and other vehicles on which registration is required, purchased at retail, such use tax to be in the amount of three percent (3%) of the retail cost thereof ("use tax"). The use tax shall be collected in accordance with the schedules set forth in the rules and regulations promulgated by the Department of Revenue.

C. Exemptions: In no event shall the use tax apply:

(1) To the storage, use or consumption of any tangible property the sale of which is subject to a retail sales tax imposed by the town;

(2) To the storage, use or consumption of any tangible personal property purchased for resale in the town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(3) To the storage, use or consumption of tangible personal property brought into the 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;

(4) To the storage, use or consumption of tangible personal property by the United States government or the state of Colorado, or its institutions or its political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(5) 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;

(6) 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 legally imposed sales and use tax of another statutory or home rule town, city or city and county equal to or in excess of the use tax imposed by this ordinance. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the town of tangible personal property purchased by him in a previous statutory or home rule municipality or city and county. 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 statutory or home rule town, city, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax imposed by this ordinance;



(7) To the storage, use or consumption of tangible personal property and household effects acquired outside of the town and brought into it by a nonresident acquiring residency;

(8) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the town and he purchased the vehicle outside of the town for use outside of the town and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled and licensed the motor vehicle outside of the town;

(9) 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;

(10) 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 the ordinance;

D. Motor and Other Vehicle Use Tax Collection:

(1) The use tax shall be applicable for every motor or other vehicle for which registration is required by the laws of the state. No registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue of the state, or its authorized agents, until any use tax due upon the use, storage or consumption thereof has been paid.

(2) The use tax on motor or other vehicles shall be collected by the authorized agent of the Department of Revenue of the state in the county, pursuant to agreement between the town and the Executive Director pursuant to Sections 29-2-106(3)(b) and 39-26-208, C.R.S.

(3) In the event that the Executive Director of the Department of Revenue fails or refuses to collect the sales or use taxes imposed by this ordinance, the board shall be authorized to provide for the collection, administration or enforcement of such sales and use taxes to the extent permitted by law or to amend this ordinance to comply with the requirements of the Department of Revenue.

E. Collection, Administration and Enforcement of Construction and Building Materials Use Tax: The collection, administration and enforcement of the use tax on construction and building materials shall be performed by the town clerk. The town board is authorized to adopt all rules and regulations which may be necessary or

appropriate for the collection, administration and enforcement of the use tax on construction and building materials.

### Section 3. Notice of Deficiency:

A. Notice: When the town asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the town shall mail a deficiency notice to the taxpayer pursuant to Section 29-2-106.1(2)(a), C.R.S. The taxpayer shall have thirty days from the mailing thereof within which to pay the taxes or to request a hearing as provided in paragraph B. of this Section 2. Failure to request a hearing within such time shall constitute an admission that such taxes are due. The deficiency notice shall contain a warning that failure to request a hearing, pursuant to paragraph B. of this Section 2., shall constitute an admission that taxes are due. The deficiency notice shall also contain notification in clear and conspicuous type, that the taxpayer has the right to a hearing before the local government and then to appeal that decision to a state hearing on the deficiency pursuant to Section 29-2-106.1, C.R.S. Such notice shall be sufficient if mailed by certified mail to the taxpayer at his last known address.

B. Hearing: The taxpayer shall have a right to a hearing, upon a request timely made, before the town clerk. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required, but the taxpayer may elect to submit a brief, in which case the town may submit a brief. The hearing shall be held and a final decision shall be issued thereon within ninety days after the town's receipt of the taxpayer's written request therefor, except the town may extend such period if the delay in holding the hearing or issuing a decision thereon was occasioned by the taxpayer, in which case the hearing shall be held and the decision issued within one hundred eighty days of the taxpayer's request in writing therefor.

### Section 4. Use of Revenues:

A. There is established a special fund of the town to be known as the Town of Berthoud Sales and Use Tax Capital Improvement Fund ("fund"). The revenues specified in paragraph B. of this Section 4. shall be used solely for the purpose of paying for a portion of the capital improvements made to Second Street and to Fourth Street. Monies credited to the fund shall not be available to be pledged or expended by interfund transfer, or otherwise, for any general purposes of the town.

B. For a period of up to four (4) years commencing July 1, 1990 and ending July 1, 1994, thirty-three and one-third percent of the revenues derived from the town's three percent sales tax and three percent use tax, as determined by the town board, shall be deposited to the fund immediately upon receipt or collection and used solely for the purposes for which the fund may be used.



The remaining revenues derived from the two percent sales tax and the use tax shall be deposited to such fund or funds as shall be directed by the town board.

Section 5. Amendments:

Except as to the sales and use tax rates provided for herein, the items taxed and exempted from the sales and use taxes under this ordinance, and the use of the tax revenue provided for in Section 4., the town board may amend, alter, delete or change the provisions of this ordinance by the adoption of an amending ordinance in accordance with law. Such amendment, alteration, deletion or change need not be submitted to the electors of the town for their approval.

Section 6. Penalty Clause:

Any person convicted of violating any of the provisions of this ordinance shall be punished by a fine not to exceed three hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

Section 7. Savings Clause:

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The board of trustees hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 8. Emergency Clause:

The board of trustees has determined that the condition of the town's capital assets has deteriorated and is continuing to deteriorate to such an extent that the health, safety and welfare of the citizens of the community may be jeopardized if additional funds are not expended to improve these capital assets. The board of trustees has therefore determined that an emergency exists.

Section 9. Submission to Electorate for Approval:

Upon adoption of this ordinance by the board of trustees, the proposals to increase both the rates of the sales and use taxes previously in effect from two percent (2%) to three percent (3%) and the establishment of the Capital Improvement Fund shall be submitted to an election by the registered electors of the town for their approval or rejection at the regular election on April 3, 1990.

This ordinance was introduced, read, adopted, approved, signed and ordered published in full this 6th day of March, 1990. With the exception of the increase in the sales and use taxes from two percent (2%) to three percent (3%) and establishment of the Capital Improvement Fund, the remainder of this ordinance shall be in full force and effect upon its adoption by the board of trustees.

Upon adoption by the electorate at the general election, this ordinance shall become effective and in force at 12:01 A.M. on July 1, 1990, and shall remain effective until repealed by the Board.

TOWN OF BERTHOUD

ATTEST:

  
Orahbelle Patterson  
Town Clerk

  
Richard Strachan  
Mayor

Published:

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