

ORDINANCE NO. 998

AN ORDINANCE AMENDING TITLE 3, RETAIL
SALES AND USE TAX, OF THE GOLDEN REVISED
ORDINANCES OF 1965, RELATING TO
IMPLEMENTATION OF H.B. 1007 OF THE 1985
COLORADO GENERAL ASSEMBLY

WHEREAS, H.B. 1007 enacted by the 1985 Colorado General Assembly requires certain amendments to the retail sales and use tax as now enacted by the City of Golden.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. Chapter 3.10 of the Golden Revised Ordinances of 1965 is hereby enacted as follows:

CHAPTER 3.10

H.B. 1007 Amendments

Sections:

- 3.10.010 Sales Tax - Non-applicability.
- 3.10.020 Use Tax - Non-applicability
- 3.10.030 Sales Tax - Credit for Sales or Use Taxes
Previously Paid to Another Municipality
- 3.10.040 Use Tax - Credit for Sales or Use Taxes
Previously Paid to Another Municipality.
- 3.10.050 Use Tax - Non-applicability to Use or
Consumption Occurring More Than Three
Years After Most Recent Sale
- 3.10.060 Use Tax - Proration as Applied to Certain
Construction Equipment.
- 3.10.070 Sales or Use tax - Collection - Limitation
of Actions.
- 3.10.080 Sales or Use tax - Refunds - Limitation of
Actions.
- 3.10.090 Sales or Use Tax - Interest on Underpayment,
Nonpayment, or Extensions of Time for
Payment of Tax.
- 3.10.100 Sales or Use Tax - Deficiency Due to Negligence.
- 3.10.110 Sales Tax - Neglect or Refusal to Make Return
or to Pay.
- 3.10.120 Use Tax - Neglect or Refusal to Make Return or
to Pay.
- 3.10.130 Penalty Interest on Unpaid Use Tax.
- 3.10.140 Rate of Interest.
- 3.10.150 Other Remedies.
- 3.10.160 Sales or Use Tax - Final decision of City
Appeals - Posting of Bonds.
- 3.10.170 Sales and Use Tax - Standard Reporting Form.
- 3.10.180 Sales and Use Tax - Collection - Map of Municipal
Boundaries.

3.10.190 Sales or Use Tax - Alternative Dispute Resolution
Procedure - Deficiency Notice or Claim for Refund.

3.10.200 Effective Date.

3.10.010 Sales Tax - Non-applicability. For transactions consummated on or after January 1, 1986, the city's sales tax shall not apply to the sale of construction and building materials, as the term is used in §29-2-109, C.R.S., 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 city evidencing that a local use tax has been paid or is required to be paid.

3.10.020 Use Tax - Non-applicability. For transactions consummated on or after January 1, 1986, the city's use tax shall not apply to the storage of construction and building materials.

3.10.030 Sales tax - credit for sales or use taxes previously paid to another municipality. For transactions consummated on or after January 1, 1986, the city's 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 two percent (2%). A credit shall be granted against the city's 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 two percent (2%).

3.10.040 Use tax - credit for sales or use taxes previously paid to another municipality. For transactions consummated on or after January 1, 1986, the city's use tax shall not apply 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 statutory or home rule municipality legally imposed on the purchaser or user equal to or in excess of two percent (2%). A credit shall be granted against the city's use tax with respect to the person's storage, use, or consumption in the city of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of the credit shall not exceed two percent (2%).

3.10.050 Use Tax - non-applicability to use or consumption occurring more than three years after most recent sale. For transactions consummated on or after January 1, 1986, the city's use tax shall not be imposed with respect to the use or

consumption of tangible personal property within the city which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

3.10.060 Use Tax - Proration as applied to certain construction equipment.

(a) Construction equipment which is located within the boundaries of the city for a period of more than thirty consecutive days shall be subjected to the full applicable use tax of the City.

(b) With respect to transactions consummated on or after January 1, 1986, construction equipment which is located within the boundaries of the city for a period of thirty consecutive days or less shall be subjected to the city's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by two percent (2%).

(c) Where the provisions of subsection (b) of this section are utilized, the credit provisions of Section 3.10.040 of this ordinance shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule municipalities on any such equipment equal two percent (2%).

(d) In order to avail himself of the provisions of subsection (b) of this section, the taxpayer shall comply with the following procedure:

(1) Prior to or on the date the equipment is located within the boundaries of the city, the taxpayer shall file with the city manager an equipment declaration on a form provided by the city. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located within and removed from the boundaries of the city, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the city.

(2) The taxpayer shall file with the city an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the boundaries of the city or, for equipment which is brought

into the boundaries of the city for a project of less than ninety days duration, no later than ten days after substantial completion of the project.

(3) The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under \$2,500.

(e) If the equipment declaration is given as provided in subsection (d) of this section, then as to any item of construction equipment for which the customary purchase price is under \$2,500 which was brought into the boundaries of the city temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as two percent (2%) and that such local sales or use tax was previously paid. In such case the burden of proof in any proceeding before the city, the executive director of the department of revenue, or the district court, shall be on the city to prove such local sales or use tax was not paid.

(f) If the taxpayer fails to comply with the provisions of subsection (d) of this section, the taxpayer may not avail himself of the provisions of subsection (b) of this section and shall be subject to the provisions of subsection (a) of this section. However, substantial compliance with the provisions of subsection (d) of this section shall allow the taxpayer to avail himself of the provisions of subsection (b) of this section.

3.10.070 Sales or use tax - collection - limitation of actions. For transactions consummated on or after January 1, 1986.

(a) No sales or use tax, or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the city manager may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(b) In the case of failure to file a return, the sales tax, use tax, or both may be assessed and collected at any time.

3.10.080 Sales or use tax - refunds - limitation of actions. For transactions consummated on or after January 1, 1986:

(a) An application for refund of sales or use tax paid under dispute by a purchaser or user who claims an exemption pursuant to Section 3.04.020 shall be made within sixty days after the purchase, storage, use, or consumption of the goods or services whereon an exemption is claimed.

(b) An application for refund of tax moneys paid in error or by mistake shall be made within three years after the date of purchase, storage, use, or consumption of the goods for which the refund is claimed.

3.10.090 Sales or use tax - interest on underpayment, nonpayment, or extensions of time for payment of tax.

(a) If any amount of sales or use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 3.10.140 of this ordinance shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the city manager.

(b) Interest prescribed under Sections 3.10.090 through 3.10.130 of this ordinance shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax to which it is applicable.

(c) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed under Sections 3.10.090 through 3.10.130 of this ordinance on any sales or use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

3.10.100 Sales or use tax - deficiency due to negligence. If any part of the deficiency in payment of the sales or use tax is due to negligence or intentional disregard of the ordinances of authorized rules and regulations of the City with knowledge thereof, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 3.10.140, in addition to the interest provided by Section 3.10.090, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten days after written notice and demand to him by the city manager. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent to the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the city manager and an additional three percent (3%) per month on said amount shall be added from the date the return was due until paid.

3.10.110 Sales tax - neglect or refusal to make return or to pay. If a person neglects or refuses to make a return in payment of the sales tax or to pay any sales tax as required, the city manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars for such failure or ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 3.10.140 plus one-half percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) in the aggregate.

3.10.120 Use tax - neglect or refusal to make return or to pay. If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the city manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 3.10.140, plus one-half of one percent (1/2%) per month from the date when due.

3.10.130 Penalty interest on unpaid use tax. Any use tax due and unpaid shall be a debt to the City, and shall draw interest at the rate imposed under Section 3.10.140, in addition to the interest provided by Section 3.10.090, from the time when due until paid.

3.10.140 Rate of interest. When interest is required or permitted to be charged under any provisions of Sections 3.10.090 through 3.10.130 of this ordinance, the annual rate of interest shall be that established by the state commissioner of banking pursuant to §39-21-110.5, C.R.S.

3.10.150 Other remedies. Nothing in Sections 3.10.090 through 3.10.140 of this ordinance shall preclude the City from utilizing any other applicable penalties or remedies for the collection or enforcement of sales or use taxes.

3.10.160 Sales or use tax - final decision of city appeals - posting of bonds. For transactions consummated on or after January 1, 1986:

(a) Within fifteen days after filing a notice of appeal as provided in Section 3.04.031, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest, and other charges stated in the final decision by the city manager which are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101 (1), C.R.S., equal to twice the amount of the taxes, interest, and other charges stated in the final decision by the city manager.

(b) The taxpayer may, at his option, deposit the disputed amount with the city manager in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the supreme court or the court of appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the city manager and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 3.10.140 of this ordinance. No claim for refund of amounts deposited with the city manager need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.

3.10.170 Sales and use tax - standard reporting form. The city shall use the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the executive director of the department of revenue by the first full month commencing one hundred twenty days after the effective date of the regulation adopting or revising such standard form.

3.10.180 Sales and use tax - collection - map of municipal boundaries. The city manager shall make available to any requesting vendor a map showing the boundaries of the City. For transactions consummated on or after January 1, 1986, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it.

3.10.190 Sales or use tax - alternative dispute resolution procedure - deficiency notice or claim for refund. For transactions consummated on or after January 1, 1986, in lieu of the procedure provided for in Section 3.04.031, the taxpayer may elect a state hearing on the city manager's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this section 3.10.190.

(a) As used in this section 3.10.190, "state hearing" means a hearing before the executive director of the department of revenue or delegate thereof as provided in §29-2-106.1 (3), C.R.S.

(b) When the city asserts that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional sales and use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to §29-2-106.1(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the City's denial of such taxpayer's claim for a refund of sales or use tax paid.

(c) The taxpayer shall request the state hearing within thirty days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this subsection (c). For purposes of this subsection (c), "exhaustion of local remedies" means:

(1) The taxpayer has timely requested in writing a hearing before the city and such city has held such hearing and issued a final decision thereon. 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 city may submit a brief. The city shall hold such hearing and issue the final decision thereon within ninety days after the city's receipt of the taxpayer's written request therefor, except the city may extend such period if the delay in holding the hearing

or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the city shall hold such hearing and issue the decision thereon within one hundred eighty days of the taxpayer's request in writing therefor; or

(2) The taxpayer has timely requested in writing a hearing before the city and the city has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in paragraph (1) above.

(d) If a taxpayer has exhausted his local remedies as provided in subsection (c) above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in §29-2-106.1 (3) through (7), C.R.S.

(e) If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the district court of the County of Jefferson as provided in §29-2-106.1 (8), C.R.S., provided the taxpayer complies with the procedures set forth in subsection (c) of this section.

(f) Nothing in this section 3.10.190 shall prohibit the taxpayer from pursuing judicial review of a final decision of the city as otherwise provided in Section 3.04.031.

(g) If the city reasonably finds that the collection of sales or use tax will be jeopardized by delay, the City may utilize the procedures set forth in §39-21-111, C.R.S.

3.10.200 Effective date. This Chapter 3.10 shall take effect January 1, 1986, and shall apply to transactions consummated on or after said date.

Section 2. Any ordinances or portions of ordinances in conflict herewith are hereby repealed.

Introduced, read and ordered published this 2nd day of December, 1985.

Adopted, approved and ordered published this 12th day of December, 1985.

David Floyd
Mayor Pro-tem

ATTEST:

Sharon L. Bennetts
City Clerk

Approved as to form:

Russell J. Sindt
City Attorney

I, Sharon L. Bennetts, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was first introduced, read, and approved at a regular meeting of the City Council of said city held on 2nd day of December, 1985 and was published as a proposed ordinance in the Golden Transcript, legal newspaper, as the law directs seven days or more prior to its passage; a public hearing was scheduled for December 12, 1985. The said proposed ordinance was introduced and read a second time and the public hearing was held. On December 12, 1985 said ordinance was passed by the City Council and ordered published in the aforesaid newspaper as the law directs.

Witness my hand and official seal of the City of Golden, Colorado, this 13th day of December, 1985.

(SEAL)

Attest: _____
City Clerk of the City of Golden,
Colorado