

ORDINANCE NO. 12

Series of 2020

AN ORDINANCE OF THE CITY OF GLENWOOD SPRINGS, COLORADO, AMENDING TITLE 040, ARTICLE 010 OF THE GLENWOOD SPRINGS MUNICIPAL CODE.

WHEREAS, the City of Glenwood Springs (“Glenwood Springs” or the “City”) is a home-rule municipality organized under Article XX of the Colorado Constitution and with the authority of the Glenwood Springs Home Rule Charter; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales and use taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code, under which City sales tax is levied on all sales and purchases of tangible personal property at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or law of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State (“Remote Sales”); and

WHEREAS, based upon such decision, the retailer’s obligation to collect Remote Sales is no longer based on the retailer’s physical presence in the City by the Constitution or law of the United States, and the City’s Sales and Use Tax Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of goods and services into the City relies on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax Remote Sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers who do not have physical presence in the City, but do have a taxable connection with the City; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales within the City; and

WHEREAS, the City has or will enter into an agreement with MuniRevs to use the Single Point of Remittance Software to reduce administrative and compliance costs with respect to a retailer's obligation to remit sales tax owed on Remote Sales; and

WHEREAS, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales will unfairly allow remote sale customers to evade a lawful tax and will permit an inequitable exception that prevents market participant from competing on an even playing field; and

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers without physical presence in the state and require marketplace facilitators to collect and remit sales tax for sales made by marketplace sellers on the marketplace facilitator's marketplace; and

WHEREAS, the City Council finds and declares that the amendments to the Taxation Code Definitions, section 040.010.010 regarding remote collection set forth herein are proper and necessary to advance the public health, safety and welfare of the City's residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GLENWOOD SPRINGS, COLORADO, ORDAINS:

Section 1. The foregoing recitals are incorporated herein as if set forth in full.

Section 2. Section 040.010.010 of the Glenwood Springs Municipal Code is hereby amended as follows, with double underlined text added and ~~strike through language deleted~~:

Section 040.010.010 – Definitions

For the purpose of this Title, certain terms are defined as follows unless the context clearly indicates that a different meaning was intended by the City Council.

* * *

Economic Nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person makes retail sales into the City, and:

(A) If for the entire calendar year the person made more than one hundred thousand dollars of retail sales in Colorado in the preceding calendar year; or

(B) for the remainder of the calendar year commencing on the first day of the month following the ninetieth day after the retailer's aggregate retail sales in Colorado for that calendar year exceed one hundred thousand dollars.

* * *

Engaged in Business in the City means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services 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 sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus.

* * *

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

Marketplace Facilitator

(A) Means a person who:

- (1) Contracts with a marketplace seller to facilitate for consideration, regardless of whether the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment or a portion of the payment to the marketplace seller.

(B) Marketplace Facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace Seller means a person, regardless of whether the person is engaged in business in the City, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

* * *

Multichannel Seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

* * *

Retailer or vendor means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms “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 a seller of building supplies, construction materials, and other tangible personal property.;
- (5) Marketplace facilitator, marketplace seller, or multichannel seller engaged in business in the City.

Section 3. A new Section 040.020.011 of the Glenwood Springs Municipal Code is hereby adopted to read as follows:

Sec. 040.020.011. Marketplace Sales.

a. _____

1. A marketplace facilitator or multichannel seller engaged in business in the City is required to collect and remit a sales or use tax on all taxable sales made by the marketplace facilitator, or made by marketplace sellers in or through the marketplace facilitator’s marketplace, or multichannel sellers to customers in the

City, whether or not the marketplace seller or multichannel seller for whom sales are facilitated would have been required to collect sales or use tax had the sale not been facilitated by the marketplace facilitator. A marketplace facilitator has all the liabilities, obligations, and rights of a retailer under Title 040 of this Code.

2. The liabilities, obligations, and rights set forth under this article are in addition to any requirements the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.

3. Except as provided in subsection (b)(1) of this section, a marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

i. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or

ii. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Article made in or through the marketplace facilitator's marketplace.

b.

1. If a marketplace facilitator demonstrates to the satisfaction of the Finance Director that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible personal property, products, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under this section for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest. The Finance Director will determine the length of time that the marketplace facilitator is relieved of liability to remit tax hereunder.

2. If a marketplace facilitator is relieved of liability under subsection (b)(1) of this section, the marketplace seller is liable under this section for tax the marketplace facilitator failed to collect, plus applicable penalties and interest.

3. This subsection (b) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller who is an affiliate of the marketplace facilitator.

c. The City shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace. The city will not audit or otherwise assess tax against marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief under subsection (b)(1).

d. With respect to any sale a multichannel seller makes that is not facilitated by a marketplace facilitator in a marketplace, the multichannel seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

Section 4. No obligation to collect the sales and use tax required by this Ordinance may be applied retroactively.

Section 5. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this ordinance, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.

Section 6. This ordinance shall become effective on the first day of the month which is at least thirty days after date of its adoption.

Section 7. The City Manager and City Attorney are hereby authorized to make such technical and clerical corrections to this Ordinance as are necessary prior to its codification, in order to align its contents with that final model ordinance approved by the Colorado Municipal League Sales Tax Simplification Committee.

INTRODUCED, READ ON FIRST READING, PASSED AND ORDERED
PUBLISHED BY TITLE ONLY THIS 14th DAY OF MAY 2020.

CITY OF GLENWOOD SPRINGS, COLORADO



Jonathan Godes, Mayor

ATTEST



Catherine Mythen Fletcher, City Clerk

INTRODUCED, READ ON SECOND READING, AND ORDERED PUBLISHED BY
TITLE ONLY TO BE EFFECTIVE TEN DAYS FOLLOWING THE DATE OF SECOND
PUBLICATION THIS 21ST DAY OF MAY 2020.

CITY OF GLENWOOD SPRINGS, COLORADO



Jonathan Godes, Mayor

ATTEST



Catherine Mythen Fletcher, City Clerk