

**ORDINANCE NO. 2020-13**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE AMENDING CHAPTER 3.04 OF TITLE 3 OF THE MUNICIPAL CODE TO ENABLE THE COLLECTION OF SALES TAX FROM REMOTE SALES**

**RECITALS:**

**WHEREAS**, the Town of Mountain Village, Colorado, (the “Town”), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution, and the Town of Mountain Village Charter; and

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

**WHEREAS**, pursuant to such authority, the Town has adopted and enacted a Sales Tax Code (the “Sales Tax Code”) codified as Chapter 3.04 of the Town of Mountain Village Municipal Code, under which Town sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws 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 jurisdiction by the Constitution or law of the United States, and the Town’s Sales Tax Code needs to be amended to clearly reflect such obligation consistent with said decision; and

**WHEREAS**, the delivery of tangible personal property, products, or services into the Town relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

**WHEREAS**, the failure to tax remote sales creates 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 that do not have a physical presence in the Town, but that still have a taxable connection with the Town;

**WHEREAS**, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

**WHEREAS**, this Ordinance provides a safe harbor to those who transact limited sales within the Town; and

**WHEREAS**, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales exposes the municipality to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

**WHEREAS**, the Town adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, AS FOLLOWS:**

**Section 1. Amendment of Title 3, Chapter 3.04 of the Municipal Code**

The Town Council hereby approves the amendments to Chapter 3.04 of Title 3 of the Town of Mountain Village Municipal Code as set forth in Exhibit A.

**Section 2. Ordinance Effect**

This Ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.

**Section 3. Severability**

The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause or portion of this Ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

**Section 4. Effective Date**

This Ordinance shall become effective thirty (30) days after passage of this Ordinance on Second Reading.

**Section 5. Public Hearing**

A public hearing on this Ordinance was held on the 16<sup>th</sup> day of July 2020, via virtual meeting held via phone and the zoom conferencing platform due to the Coronavirus Pandemic.

**INTRODUCED, READ AND REFERRED** to public hearing before the Town Council of the Town of Mountain Village, Colorado, on the 18<sup>th</sup> day of June 2020.

**TOWN OF MOUNTAIN VILLAGE**

**TOWN OF MOUNTAIN VILLAGE,  
COLORADO, A HOME-RULE  
MUNICIPALITY**

By:   
Laila Benitez, Mayor

ATTEST:

  
Susan Johnston, Town Clerk

**HEARD AND FINALLY ADOPTED** by the Town Council of the Town of Mountain Village, Colorado this 16<sup>th</sup> day of July 2020.

**TOWN OF MOUNTAIN VILLAGE**

**TOWN OF MOUNTAIN VILLAGE,  
COLORADO, A HOME-RULE  
MUNICIPALITY**

By:   
Laila Benitez, Mayor

ATTEST:

  
Susan Johnston, Town Clerk

Approved as To Form:

  
Jim Mahoney, Town Attorney

I, Susan Johnston, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No.2020-13 ("Ordinance") is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on June 18, 2020, by the affirmative vote of a quorum of the Town Council as follows:

<b>Council Member Name</b>	<b>"Yes"</b>	<b>"No"</b>	<b>Absent</b>	<b>Abstain</b>
Laila Benitez, Mayor	X			
Dan Caton	X			
Patrick Berry	X			
Natalie Binder			X	
Peter Duprey			X	
Jack Gilbride	X			
Marti Prohaska	X			

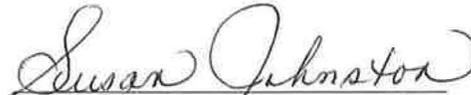
3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on Wednesday June24, 2020 in accordance with Section 5.2b of the Town of Mountain Village Home Rule.

4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on July 16, 2020. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

<b>Council Member Name</b>	<b>"Yes"</b>	<b>"No"</b>	<b>Absent</b>	<b>Abstain</b>
Laila Benitez, Mayor	X			
Dan Caton	X			
Patrick Berry	X			
Natalie Binder	X			
Peter Duprey	X			
Jack Gilbride	X			
Marti Prohaska	X			

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Town this 16<sup>th</sup> day of July 2020.

  
Susan Johnston, Town Clerk

(SEAL)



# TITLE 3

## REVENUE AND FINANCE

<u>CHAPTER</u>		<u>SUBJECT</u>
3.01		Fiscal Year
3.04		Sales Tax
3.08		Real Property
3.12		Accommodations
3.14		Restaurant and Bar Sales Tax
3.16		Use Tax
3.17		Road Impact Fee
3.20		Revenue and Spending
3.24	Pay	Payment of Fees Relating to Issuance of Approvals

## **CHAPTER 3.04**

### **SALES TAX**

**Sections:**

- 3.04.010 Purpose
- 3.04.020 Definitions
- 3.04.030 Property and Services Taxes
- 3.04.040 Exclusions
- 3.04.050 Tax on Tangible Personal Property
- 3.04.060 Place of Sale
- 3.04.070 Collection, Administration and Enforcement
- 3.04.080 Amendments
- 3.04.090 Severability
- 3.04.100 Authorization to Act
- 3.04.110 Sales Tax Registration
- 3.04.120 Audit of Record
- 3.04.130 Tax Information Confidential
- 3.04.140 Overpayment
- 3.04.150 Underpayment on Returns
- 3.04.160 Tax Deficiencies and Penalties
- 3.04.170 Notice of Assessment and Protest
- 3.04.180 Hearings and Appeals
- 3.04.190 Lien for Tax Due
- 3.04.200 Civil Action
- 3.04.210 Jeopardy Assessment
- 3.04.220 Distraint and Sale
- 3.04.230 Violations, Enforcement and Penalty
- 3.04.240 Statute of Limitations
- 3.04.250 Enforceability

### **3.04.010 Purpose**

Pursuant to Ordinance 98-07, Section 1: The purpose of this Chapter is to impose a Sales Tax upon the sale at retail of tangible personal property and the furnishing of certain services in the Town, pursuant to its powers as a home- rule Town under the Colorado Constitution, in the same manner as they are taxable pursuant to Article 2 of Title 29, C.R.S. as amended, except as hereafter provided. (Ord. 98-07 § 1).

The purpose of this Chapter is to establish certain rules, regulations and procedures and to delegate the authority for the establishment of additional rules, regulations and procedures for the collection of the sales tax imposed by Chapter 3.04 of the Town's Municipal Code (the "Sales Tax"). This Chapter specifically repeals and replaces Section 3.04.070 of the Town's Municipal Code authorizing collection of the Sales Tax by the Colorado Department of Revenue. (Ord. No. 2011-08 §1(A)).

### **3.04.020 Definitions**

For the purpose of this Chapter, the following words and phrases as used in this chapter shall have the following meaning:

- A. "Auction"** means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.
- B. "Automotive Vehicle"** means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive Vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive Vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.
- C. "Business"** means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.
- D. "Candy"** means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.
- E. "Carrier Access Services"** means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

- F. “Charitable Organization”** means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.
- G. “Town” or “Town”** means the Town of Mountain Village, Colorado.
- H. “Coins”** means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.
- I. “Coin Operated Device”** means any device operated by coins or currency or any substitute therefor.
- J. “Collection Costs”** shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.
- K. “Commercial Packaging Materials”** means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.
- L. “Commercial Shipping Materials”** means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.
- M. “Community Organization”** means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

- N. “Construction Equipment”** means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.
- O. “Construction Materials”** means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction Materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.
- P. “Consumer”** means any person in the Town who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the Town.
- Q. “Contract Auditor”** means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.
- R. “Contractor”** means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, Contractor also includes subcontractor.
- S. “Cover Charge”** means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.
- T. “Data Processing Equipment”** means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

- U. **“Digital Product”** means an electronic product including, but not limited to: (1) “digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” or “drawings.” (2) “digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) “digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) “digital books” which means works that are generally recognized in the ordinary and usual sense as “books”.
- V. **“Distribution”** means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shopper’s guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.
- W. **“Dual Residency”** means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the Town. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the Town for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the Town, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.
- X. **“Dwelling Unit”** means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.
- Y. **“Economic Nexus”** means the connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and (1) in the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. Section 39-26-102(3)(c) as amended or (2) in the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. Section 39-26-102(3)(c), as amended. This definition does not

apply to any person who is doing business in this state but otherwise applies to any other person.

- Z.** “**Engaged in Business in the Town**” means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the Town. Engaged in Business in the Town 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; or (5) retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve month period; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in \_\_\_\_\_ (insert section of code).
- AA.** “**Factory Built Housing**” means a manufactured home or modular home.
- BB.** “**Finance Director**” means the Finance Director of the Town of Mountain Village or such other person designated by the municipality; Finance Director shall also include such person's designee.
- CC.** “**Food For Home Consumption**” means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.
- DD.** “**Garage Sales**” means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

- EE. “Gross Sales”** means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.
- FF. “Internet Access Services”** means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet Access Services.
- GG. “Internet Subscription Service”** means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.
- HH. “License”** means a Town of Mountain Village business license.
- II. “Linen Services”** means services involving the provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.
- JJ. “Machinery”** means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.
- KK. “Manufactured Home”** means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.
- LL. “Manufacturing”** means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.
- MM. “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.

**NN. “Marketplace Facilitator”** means a person who (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not 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 or multichannel seller; and (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

A Marketplace Facilitator does not include a person that exclusively provides internet advertising services or list products for sale and that does not otherwise meet this definition.

**OO. “Marketplace Seller”** means a person, regardless of whether or not 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.

**PP. “Medical Marijuana”** means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid “registry identification card” issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

**QQ. “Mobile Machinery and Self-Propelled Construction Equipment”** means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

**RR. “Modular Home”** means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.

- SS. “Motor Fuel”** means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.
- TT. “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.
- UU. “Newspaper”** means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term Newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.
- VV. “Online Garage Sales”** means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller’s household.
- WW. “Parent”** means a parent of a student.
- XX. “Person”** means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.
- YY. “Photovoltaic System”** means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

**ZZ.** “**Precious Metal Bullion**” means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

**AAA.** “**Prepress Preparation Material**” means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

**BBB.** “**Preprinted Newspaper Supplements**” shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

**CCC.** “**Prescription Drugs for Animals**” means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

**DDD.** “**Prescription Drugs for Humans**” means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

**EEE.** “**Price**” or “**Purchase Price**” means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the

case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or Purchase Price includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.
- (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Price or Purchase Price shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.
- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be

allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

**FFF. “Private Communications Services”** means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

**GGG. “Prosthetic Devices for Animals”** means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

**HHH. “Prosthetic Devices for Humans”** means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

**III. “Purchase” or “Sale”** means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. The utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property.;
- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms Purchase and Sale do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;

- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (8) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (11) shall constitute a sale. For the purposes of this paragraph (11), a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

**JJJ. "Recreation Services"** means all services relating to athletic or entertainment participation events and/or activities including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships.

**KKK. "Renewable Energy"** means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable Energy does not include

energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

**LLL. “Resident”** means a person who resides or maintains one or more places of business within the Town, regardless of whether that person also resides or maintains a place of business outside of the Town.

**MMM. “Retail Sales”** means all sales except wholesale sales.

**NNN. “Retailer or Vendor”** means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any: (1) Auctioneer; (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-Contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property; (5) Marketplace Facilitator, Marketplace Seller, or Multichannel Seller.

**OOO. “Retailer-Contractor”** means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

**PPP. “Return”** means any form prescribed by the Town/town administration for computing and reporting a total tax liability.

**QQQ. “Sale that Benefits a Colorado School”** means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.

**RRR. “Sales Tax”** means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under the Town of Mountain Village Municipal Code.

**SSS. “School”** means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

**TTT. “Security System Services”** means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.

**UUU. “Soft Drink”** means a nonalcoholic beverage that contains natural or artificial sweeteners. “Soft drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

**VVV. “Software Program”** means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes: (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer; (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf (“COTS”),” “mass produced” or “standardized;” (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and (4) The generic term “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing software programs.

**WWW. “Software as a Service”** means software that is rented, leased or subscribed to from a provider and used at the consumer’s location, including but not limited to applications, systems or programs.

**XXX. “Software License Fee”** means a fee charged for the right to use, access, or maintain software programs.

**YYY. “Software Maintenance Agreement”** means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support

**ZZZ. “Solar Thermal Systems”** means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.

**AAAA.** “**Sound System Services**” means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

**BBBB.** “**Special Fuel**” means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

**CCCC.** “**Storage**” means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the Town from any person or vendor.

**DDDD.** “**Student**” means any person enrolled in a school.

**EEEE.** “**Tangible Personal Property**” means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

**FFFF.** “**Tax**” means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

**GGGG.** “**Tax Deficiency**” or “**Deficiency**” means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

**HHHH.** “**Taxable Sales**” means gross sales less any exemptions and deductions specified in this Town of Mountain Village Municipal Code.

**IIII.** “**Taxable Services**” means services subject to tax pursuant to this Town of Mountain Village Municipal Code.

**JJJJ.** “**Taxpayer**” means any person obligated to collect and/or pay tax under the terms of this Town of Mountain Village Municipal Code.

**KKKK.** “**Telecommunications Service**” means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any

means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication.

**LLLL. “Television & Entertainment Services”** means audio or visual content, that can be transmitted electronically by any means, for which a charge is imposed.

**MMMM. “Therapeutic Device”** means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

**NNNN. “Toll Free Telecommunications Service”** means a Telecommunications Service that allows a caller to dial a number without incurring an additional charge for the call.

**OOOO. “Total Tax Liability”** means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

**PPPP. “Transient / Temporary Sale”** means a sale by any person who engages in a temporary business of selling and delivering goods within the Town for a period of no more than seven consecutive days.

**QQQQ. “Transient / Temporary Vendor”** means any person who engages in the business of Transient / Temporary Sales.

**RRRR. “Wholesale Sales”** means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter.

**SSSS. “Wholesaler”** means any person doing an organized wholesale or jobbing business and selling to Retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

### **3.04.030 Property and Services Taxes**

There is hereby levied and there shall be collected and paid a Sales Tax in an amount herein provided on the sale at retail or personal property and the furnishing of certain services, as provided in “The Emergency Retail Sales Tax Act of 1935,” as set forth in Article 26 of Title 39, C.R.S. (the “State Sales Tax Act”), which provisions are incorporated by this reference. 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., except the exemption allowed for purchase of machinery or machine tools by Section 39-26-114(11), C.R.S. (Ord. 98-07 § 11).

#### **3.04.040 Exclusions**

- A. Amount. The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.
- B. Delivery Charges. The gross receipts from sales shall include delivery charges, when such charges are subject to the State of Colorado Sales and Use Tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made.
- C. General Exemptions. There shall be exempt from taxation under the provisions of this Chapter, the same exemptions as those specified in Section 39-26-701, *et. seq.*, C.R.S., as amended from time to time, except the exemption allowed for purchase of machinery or machine tools by Section 39-26-709, C.R.S., as amended from time to time.
- D. Non Resident. All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall be exempt from the subject Sales Tax when such sales meet both of the following conditions: 1. The purchaser 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 laws of the State of Colorado. (Ord. 98-07 § 12-15).
- E. Exempt Refund Request. Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase. (Ord. No. 2011-08 §17).

#### **3.04.050 Tax on Tangible Personal Property**

There is hereby imposed upon all sales of tangible personal property at retail and the furnishing of other certain services, as specified in Section 3.08.050 of this Code, a four and one half percent (4.5%) Sales Tax. The imposition of the Sales 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 as amended from time to time. (Ord. 2003-06 § 4).

#### **3.04.060 Place of Sale**

- A. Place of Sale. For the purpose of this Chapter, all retail sales, except Marketplace Sales as set forth below 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 the destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town. In the event that the 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 Chapter shall be determined by the provisions of the State Sales Tax Act and by the rules and regulations promulgated by the Department of Revenue of the State of Colorado. (Ord. 98-07 § 17).
- B. Marketplace Sales. Marketplace Sales are required to remit the Sales tax as follows:
1. A Marketplace facilitator engaged in business in the Town, is required to collect and remit Sales Tax on all taxable sales made by the Marketplace Facilitator, or facilitated by it for Marketplace Sellers or Multichannel Sellers to customers in the Town, whether or not the Marketplace Seller for whom sales are facilitated would have been required to collect Sales Tax had the sale not been facilitated by the Marketplace Facilitator.
  2. A Marketplace Facilitator shall assume all the duties, responsibilities, and liabilities of a Retailer or Vendor. Marketplace Facilitators shall be liable for the taxes collected from Marketplace Sellers or Multichannel Sellers. The Town may recover any unpaid taxes, penalties, and interest from the Marketplace Facilitator that is responsible for collecting on behalf of Marketplace Sellers or Multichannel Sellers.
  3. The liabilities, obligations, and rights set forth under this section are in addition to any duties and responsibilities of the Marketplace Facilitator has under this chapter if it also offers for sale tangible personal property, products, or services through other means.
  4. 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 chapter if the Marketplace Seller can show that such sale was facilitated by a Marketplace Facilitator:
    - a. 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
    - b. 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 chapter made in or through the Marketplace Facilitator's marketplace.
  5. A sale a Marketplace Seller makes that is not facilitated by a licensed Marketplace Facilitator in a marketplace, then the Marketplace Seller is subject to all of the same licensing, collection, remittance, filing and record keeping requirements as any other Retailer.
- C. Auditing of Marketplace Facilitator. With respect to any sale the Town shall solely audit the Marketplace Facilitator for sales made by Marketplace Sellers or Multichannel Sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax

against Marketplace Sellers or Multichannel Sellers for sales facilitated by a marketplace facilitator.

- D. **No Retroactive Obligations.** No obligation to collect sales tax as required by this the provisions of Section 3.04.060.B may be applied retroactively. Responsibilities, duties and liabilities described in Section 3.04.060.B of a Marketplace Facilitator, Marketplace Seller, or Multichannel Seller begin on the earlier of when they become licensed to collect the Town's Sales Tax or when they become legally obligated to collect the Town's Sales Tax under this Chapter 3.04.

### **3.04.070 Collection, Administration and Enforcement**

- A. **Trust Status of Tax.** All Sales Tax collected by any retailer shall be the property of the Town and remain public monies in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town. (Ord. No. 2011-08 §3(A)).
- B. **Retailer Responsible for Collection and Payment of Tax.** Every retailer engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the Sales Tax rate established by Section 3.04.08 of the Municipal Code. Retailers shall add the tax imposed, showing such tax as a separate and distinct item. Except as provided in this Section, no retailer shall advertise, hold out or state to the public or to any consumer, either directly or indirectly, that the sales tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price or, if added, that it or any part thereof shall be refunded.
1. **Tax constitutes debt.** Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.
  2. **Excess tax.** No retailer shall retain any Sales Tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected, and include it in the calculation of tax due.
  3. **Disputed tax.** When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect, and the purchaser shall pay, such tax. The purchaser may submit a claim for refund to the Town within sixty (60) days of the date of purchase. Any such tax refunded by the Town will be paid directly to the purchaser.
  4. **Vendor Fee.** The Finance Director may establish a vendor fee, which shall be calculated as a percentage of the sales tax, to be established by the Finance Director which may be retained by the retailer for Sales Tax payments paid on time. (Ord. No. 2011-08 §4).
- C. **Filing Returns, Due Date.** Every taxpayer shall file a return on the forms and according to the procedures prescribed by the Finance Director pursuant to Section 3.04.100 herein, whether or not a tax is due, and remit any tax due to the Town on or before the twentieth day of the month following the reporting period. Failure to receive a return does not relieve a taxpayer of its legal responsibility for filing a return on or before the due date.

1. A retailer engaged in business in the Town at two (2) or more locations, whether inside or outside the Town, who collects Sales Tax, may file one (1) return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.
2. For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying the tax due. Such good cause shall not include the retailer's inability to pay taxes due to the Town due to other debts incurred by the retailer or his or her business.
3. No person shall make any false statement in connection with a return.
4. The Town Council may require every taxpayer to complete all sections relevant to the type of business operated by the taxpayer, on an economic impact form, which shall include but not be limited to, average daily rate, occupancy rate, total number of rooms, occupied rooms, total lodging revenue, lodging revenue rounding variance, actual lodging revenue, retail sales revenue, other revenue and restaurant revenue. The Finance Director shall designate any reporting periods or period within a reporting period where the economic impact form is required to be filed by a vendor by designating such reporting period as requiring an economic impact form at least thirty (30) days prior to such reporting period. (Ord. No. 2011-08 §5).

D. Reporting Periods

1. Unless otherwise approved by the Town Council by Resolution, taxpayers must file returns and pay taxes as follows:
  - a. Upon approval of the Finance Director, a taxpayer whose yearly tax is Three Hundred Dollars (\$300.00) or less may file returns and pay tax annually or monthly.
  - b. A taxpayer whose yearly tax is more than Three Hundred (\$300.00) or more shall file returns and pay tax monthly.
  - c. For the purpose of the timing of the filing of returns, the amounts considered in Paragraphs (1) through (2) must be consistent for a period of three (3) consecutive months to be approved for any schedule other than reporting monthly.
2. The reporting period for a final return shall end on the date of the transfer of ownership or cessation of the business.
3. The reporting period for a vendor selling tangible personal property at a temporary location or site of a special event within the Town shall end on the day the temporary location closes or special event concludes.
4. If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director, and immediately following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted. (Ord. No. 2011-08 §6).

- E. Duty to Keep Books and Records. Every person engaged in business in the Town for which the Sales Tax is required to be collected shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records, which allow the accurate

determination of the tax due. Every person shall provide all such records for audit by the Town during normal business hours. (Ord. No. 2011-08 §7).

### **3.04.080 Amendments**

Town of Mountain Village hereby reduces the Sales Tax rate to 4.5%. Notwithstanding the foregoing, nothing herein shall be construed to limit or reduce voter authority for the levy of a full 6% Sales Tax, should the Town Council determine it to be necessary in the future. (Ord. 03-06 § 1).

### **3.04.090 Severability**

If any portion of this Chapter is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Chapter. The Town Council hereby declares that it would have passed this Chapter and each part hereof irrespective of the fact that any one part be declared invalid. (Ord. No. 2011-08 §37) (Ord. No. 98-07 §22)).

### **3.04.100 Authorization to Act**

- A. Administration. The administration of this Article is hereby vested in the Finance Director, except where otherwise noted. The Officers of the Town be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Chapter. (Ord. No. 2011-08 §11(A) (Ord. 98-07 § 23)).
- B. Forms and procedures. The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of tax, which may include online forms for the ascertainment, assessment and collection of tax. (Ord. No. 2011-08 §11(B)).
- C. Fees. The Finance Director shall recommend fees, including but not limited to, a convenience fee for payment by credit card, automatic clearing house (ACH) fees and other similar fees, to the Town Council, which shall adopt such fees by resolution. (Ord. No. 2011-08 §11(C)).
- D. Regulations. The Finance Director may formulate and promulgate appropriate and additional regulations to effectuate the purpose of this Article. (Ord. No. 2011-08 §11(D)).
- E. Additional information. The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax. (Ord. No. 2011-08 §11(E)).
- F. Subpoenas. The Finance Director may issue a subpoena to command a person to attend and give testimony or to produce books, records or accounts.
  - 1. Any subpoena issued under the terms of this Article shall be served as set forth in the Colorado Rules of Civil Procedure, including payment of witness fees. When the witness is subpoenaed at the insistence of the Town, such fees shall be paid by the Town. When a witness is subpoenaed at the insistence of the taxpayer, the Finance Director may require that the cost of the service of the subpoena and the fee be paid by the taxpayer. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.
  - 2. If a subpoena issued by the Finance Director is duly served and the respondent fails to attend, give testimony or produce books, accounts or records as commanded, the Finance Director may request the Town Attorney to file a motion with the Municipal Court for an order enforcing the subpoena. (Ord. No. 2011-08 §11(F)).
- G. Oaths. The Finance Director is authorized to administer oaths and take testimony at the hearing. (Ord. No. 2011-08 §11(G)).
- H. Agents. The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article. (Ord. No. 2011-08 §11(H)).

- I. Partial payments. The Finance Director may accept any partial payment made and apply such payments toward the tax due. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated. (Ord. No. 2011-08 §11(I)).
- J. Notices. Notices required by this Article, excepting the first notice of assessment, shall be in writing and delivered in person by the Finance Director or his or her agent, or sent postage paid by certified mail to the last known address of the taxpayer or served in person by an officer of the Town Police Department. (Ord. No. 2011-08 §11(J)).

### **3.04.110 Sales Tax Registration**

- A. Except as provided in this Article, any person engaged in business in the Town must first register on the forms provided by the Town. No sales tax license shall be required for any governmental agency or charitable organization which is exempt from the Sales Tax under this Article. Governmental agencies or charitable organizations which are exempt from the Sales Tax on the purchases of tangible personal property, the collection, reporting and payment of appropriate Sales Taxes to the Town is required on the sale or auction of tangible personal property even when used for the purpose of not-for-profit fundraising, whether or not a sales tax registration has been performed. (Ord. No. 2011-08 §8(A)).
- B. When business is transacted by one (1) person at two (2) or more separate locations inside the Town, a single registration may occur, but shall list all locations for each place of business. (Ord. No. 2011-08 §8(B)).
- C. Persons for whom registration is required shall first submit to the Finance Director an application on forms to be provided by the Town, providing the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the physical address and mailing address of such business; and such other information as the Finance Director may require. (Ord. No. 2011-08 §9(A)).
- D. Registration shall be in effect for one (1) year and shall be renewed upon renewal of the general business license or upon completion of a license renewal registration process. (Ord. No. 2011-08 §9(B)).
- E. No registration shall be transferable. After any sale or acquisition of a business, the new owner shall complete a new registration. (Ord. No. 201-08 §9(C)).
- F. Cancellation. The Finance Director may cancel any license for the following reasons:
  - 1. Upon receipt of a written notice that the taxpayer is no longer engaged in business in the Town.
  - 2. Upon the taxpayer's failure to respond to three (3) consecutive notices of delinquency. (Ord. No. 2011-08 §10(A)).

- G. The Finance Director shall give notice to the taxpayer that the license has been cancelled. Notice shall be in writing, served on the taxpayer in person by an officer of the Town Police Department, or delivered by certified mail or any combination of those notification procedures. (Ord. No. 2011-08 §10(B)).
- H. Revocation. The Finance Director may, after a reasonable notice and a full hearing, issue a finding and order to revoke the license of any person found to have violated any provision of this Article. (Ord. No. 2011-08 §10(C)).
- I. Appeal. Any person may appeal a finding and order revoking their license in District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. No. 2011-08 §10(D)).
- J. No taxpayer shall continue engaging in business in the Town after his or her license has been cancelled or revoked. (Ord. No. 2011-08 §10(E)).

### **3.04.120 Audit of Record.**

- A. For the purpose of ascertaining the correct amount of tax due from any person engaged in business in the Town, the Finance Director may authorize his or her agent to conduct an audit by examining any relevant books, records and accounts of such person.
  - 1. All books, accounts and records shall be available at any time during regular business hours for examination by an authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director, the Finance Director may issue a subpoena to require that the taxpayer or his or her representative attend a hearing or produce any such books, accounts or records for examination.
  - 2. Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the Finance Director deems appropriate:
    - a. By comparing the tax reported and paid on returns to the actual tax due.
    - b. By identifying transactions on which the tax was not properly or accurately collected or paid.
    - c. By identifying other irregularities in the calculation of tax due.
  - 3. Any charitable organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in business in the Town. (Ord. No. 2011-08 §12(A)).
- B. Coordinated Audit. Any taxpayer licensed in the Town pursuant to this Article and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection may request a coordinated audit as provided herein.
  - 1. Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received

and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage of time-based limitation upon the Town's right to recover tax owed by the taxpayer for the audit period.

2. Except as provided in Subsection (F) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of any statute of limitations may be audited by the Town during the twelve (12) months after such a request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.
3. If the Town desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (a) above, the Finance Director shall so notify the Finance Director or other proper authority of the municipality whose notice of audit prompted the taxpayer's request for a coordinated audit. The Finance Director shall cooperate with other participating municipalities in arranging the time in which the coordinated audit will be conducted, the period of time to be covered by the audit and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.
4. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the Town, the Finance Director shall facilitate arrangements between the Town and other municipalities participating in the coordinated audit, unless and until an official from some other participating municipality agrees to assume this responsibility. The Finance Director shall cooperate with other participating municipalities to, whenever practical, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by, or on behalf of, those municipalities participating in the coordinated audit may be shared only among such participating municipalities.
5. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the Town, the Finance Director shall, once arrangements for the coordinated audit between the Town and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period of time to be audited and the records most likely to be required by the participating municipalities for completion of the coordinated audit. The Finance Director shall also propose a schedule for the coordinated audit. (Ord. No. 2011-08 §13).

C. The coordinated audit procedure set forth in this Section shall not apply:

1. When the proposed audit is a jeopardy audit.
2. To audits for which a notice of audit was given prior to the effective date of the Chapter codified herein.
3. When a taxpayer refuses to promptly sign a waiver of any pertinent statutes of limitations.
4. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided for in Subsection (B) above. (Ord. No. 2011-08 §13(F)).

### **3.04.130 Tax Information Confidential.**

- A. All specific information gained under the provisions of this Article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through an audit, shall be treated by the Town and its officers, employees, agents or legal representatives as confidential. The Town shall require all officers, agents and employees who are directly involved with such confidential information to sign an acknowledgment and/or agreement regarding the confidentiality of such information. (Ord. No. 2011-08 §14(A)).
- B. Except as directed by judicial order or as provided in this Section, no Town officer, employee, agent or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers or the inspection of such confidential information by an officer, employee, agent or legal representative of the Town. (Ord. No. 2011-08 §14(B)).
- C. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding. (Ord. No. 2011-08 §14(C)).

### **3.04.140 Overpayment**

- A. Overpayment from Returns. If the amount remitted with the return is more than the tax due as computed from information in such return, the taxpayer shall be notified.
  - 1. If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the taxpayer may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.
  - 2. If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period. (Ord. No. 2011-08 §15).
- B. Overpayment Determined Through Audit. If the Town ascertains through audit of a taxpayer's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund, if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment. (Ord. No. 2011-08 §16).

- C. Claim for Refund. No tax overpayment except as provided in Section 3.04.160 above shall be refunded unless a claim for refund is signed and submitted to the Town by the taxpayer.
1. An application for refund of tax shall:
    - a. Be made on a claim for refund form furnished by the Town.
    - b. Be signed by the taxpayer.
    - c. Include adequate documentation of the claim.
  2. The Finance Director shall examine the claim for refund and give written notice to the taxpayer of the amount to be refunded or denied.
  3. The right of any person to obtain a refund pursuant to this Article shall not be assignable.
  4. No person shall make any false statement in connection with a claim for refund. (Ord. No. 2011-08 §18).

### **3.04.150 Underpayment on Returns.**

- A. If the amount remitted with a return is less than the tax computed from information in such return, the taxpayer shall be notified.
1. If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.
  2. If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period. (Ord. No. 2011-08 §19).

### **3.04.160 Tax Deficiencies and Penalties**

- A. If any taxpayer neglects or refuses to obtain a license, the amount of tax due shall be estimated, based upon such information as may be available, and a notice of assessment shall be issued. (Ord. No. 2011-08 §20(A)).
- B. If any taxpayer neglects or refuses to file a return by the date due, the tax due shall be estimated, based on such information as may be available, and a notice of assessment shall be issued. (Ord. No. 2011-08 §20(B)).
- C. Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment. (Ord. No. 2011-08 §20(C)).
- D. If the Town determines through an audit of the taxpayer's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued. (Ord. No. 2011-08 §21(A)).
- E. Penalties. A penalty shall be levied for any tax deficiency.
1. Penalty for late payment. For transactions consummated after the effective date of the Chapter codified herein, the penalty for late payment shall be ten dollars (\$10.00) or ten percent (10%) of the tax deficiency, whichever is greater. Additionally, one percent

(1%) of the tax deficiency per month from the date when due, not exceeding eighteen percent (18%) in the aggregate, shall be assessed.

2. Penalty for fraud. If any tax deficiency is due to fraud or intent to evade the tax, the penalty shall be one hundred percent (100%) of the total tax deficiency.
3. Abatement of penalty. Any penalty assessed under this Section may be abated by the Finance Director, with the approval of the Town Manager, if the taxpayer submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the Finance Director and the Town Manager find good cause thereof. (Ord. No. 2011-08 §22).

- F. Interest. Interest shall be levied on any tax deficiency at a rate to be set by the Town from time to time. Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.
1. When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the due date of such assessment and the payment date established in an informal meeting or thirty (30) days after the date of a finding of fact, conclusion or a decision issued after a hearing.
  2. Interest properly assessed on any tax deficiency shall not be abated. (Ord. No. 2011-08 §23).

### **3.04.170 Notice of Assessment and Protest**

- A. The Finance Director or his or her agent shall issue a notice of assessment for any tax deficiency, penalties or interest due. (Ord. No. 2011-08 §24(A)).
- B. The first notice of assessment shall be made electronically to the email address provided by the vendor. All further notices of assessment shall be in writing and delivered in person or sent postage paid by first-class mail to the last known address of the taxpayer. (Ord. No. 2011-08 §24(B)).
- C. The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment. (Ord. No. 2011-08 §24(C)).
- D. The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefore exists. (Ord. No. 2011-08 §24(D)).
- E. Any notice of assessment may be protested by the taxpayer to whom it is issued. (Ord. No. 2011-08 §25(A)).
- F. A protest of a notice of assessment issued to a vendor or taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment.

Any such protest shall identify the amount of tax disputed and the basis for the protest. (Ord. No. 2011-08 §25(B)).

- G. When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the taxpayer fails to pursue the protest in a timely manner. (Ord. No. 2011-08 §25(C)).
- H. Any denial of a claim for a refund may be protested by the taxpayer who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund and shall identify the amount of the refund requested and the basis for the protest. (Ord. No. 2011-08 §25(D)).
- I. Any timely protest entitles a taxpayer to a hearing under the provision of this Article. (Ord. No. 2011-08 §25(E)).
- J. If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the Finance Director may recommend an informal meeting with the taxpayer to resolve the issues. (Ord. No. 2011-08 §25(F)).
- K. Participation in such an informal meeting does not prevent either the taxpayer or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting. (Ord. No. 2011-08 §25(G)).

### **3.04.180 Hearings and Appeals**

- A. The Town shall commence a hearing within ninety (90) days after the Town's receipt of the taxpayer's written protest, except that the Town may extend such period if the delay is requested by the taxpayer. The Finance Director shall notify the taxpayer in writing of the time and place of such hearing. (Ord. No. 2011-08 §26(A)).
- B. Every hearing shall be held within the Town and before the Finance Director and/or the Town Manager. (Ord. No. 2011-08 §26(B)).
- C. The taxpayer may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest. The filing of briefs shall not be required. (Ord. No. 2011-08 §26(C)).
- D. Based on the evidence presented at the hearing, the Finance Director shall issue a finding of fact, conclusions and decision which may modify or abate in full the tax, penalties and/or interest protested at the hearing, approve a refund or uphold the assessment. (Ord. No. 2011-08 §26(D)).
- E. After such hearing, the taxpayer shall not be entitled to a second hearing on the same notice of assessment or denial of refund. (Ord. No. 2011-08 §26(E)).

- F. Unless the decision of the Finance Director is appealed as provided in this Article, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the finding of fact, conclusions and decision. (Ord. No. 2011-08 §26(F)).
- G. Subsequent to a hearing, the taxpayer may appeal the decision of the Finance Director to District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. No. 2011-08 §27(A)).
- H. Upon appeal to the District Court, the taxpayer shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director. (Ord. No. 2011-08 §27(B)).
- I. An appeal of a final decision of the Finance Director in a hearing held pursuant to this Article shall be commenced within thirty (30) days of such decision. (Ord. No. 2011-08 §27(C)).

### **3.04.190 Lien for Tax Due**

- A. Issuance. If any tax due is not paid by the payment date of a notice of assessment, the Finance Director may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the tax due, the date of accrual thereof and the location of the property, and shall be certified by the Finance Director. (Ord. No. 2011-08 §28(A)).
- B. Filing. The notice of lien shall be filed in the office of the Clerk and Recorder of any county in the State in which the real and personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof. (Ord. No. 2011-08 §28(B)).
- C. Priority. The attachment and priority of such lien shall be as follows:
  - 1. Such lien shall be a first and prior lien upon the goods and business fixtures owned or used by any taxpayer, including those under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.
  - 2. Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade and business fixtures shall be a first and prior lien except as to pre-existing claims or liens of a bona fide mortgagee, pledge, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.
  - 3. The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this Sub-section if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the

execution of the lease if the lease is recorded with the Clerk and Recorder of the county where the property is located or based.

4. Motor vehicles which are properly registered in this State, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has earned reserve, allowance for depreciation not to exceed the fair market value or similar interest, which is or may be credited to the lease.
5. Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for the purposes of this Section. (Ord. No. 2011-08 §28(C)).

D. Enforcement against real property. If a notice of lien is filed against any real property, the Finance Director may direct the Town Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires. (Ord. No. 2011-08 §28(D)).

E. Any lien filed pursuant to this Section shall include the costs of the Town, including reasonable attorney's fees. (Ord. No. 2011-08 §28(E)).

F. Performance of Lien. Any lien for tax due shall continue until a release of lien is filed by the Finance Director. Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired. (Ord. No. 2011-08 §29).

G. Release of Lien. Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of the lien with the Clerk and Recorder of the county in which the lien was filed. (Ord. No. 2011-08 §30(A)).

### **3.04.200 Civil Action**

A. Any unpaid tax due shall constitute a debt of the taxpayer to the Town, and the Finance Director or Town Manager may direct the Town Attorney to file a civil action in the Town's Municipal Court to collect such taxes due. (Ord. No. 2011-08 §31(A)).

B. The return filed by a taxpayer or the notice of assessment issued by the Finance Director shall be prima facie proof of the tax due. (Ord. No. 2011-08 §31(B)).

C. If a judgment is obtained by the Town, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be

required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Ord. No. 2011-08 §31(C)).

- D. In any such civil action filed by the Town Attorney, the Town shall be entitled to recover its costs incurred therein, including reasonable attorney's fees. (Ord. No. 2011-08 §31(D)).

### **3.04.210 Jeopardy Assessment.**

- A. Issuance. If the collection of any tax due from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the Town Manager may declare the taxable period immediately terminated, require the Finance Director to determine the tax and issue a jeopardy assessment and demand payment. Any tax so assessed shall be due and payable immediately. (Ord. No. 2011-08 §32(A)).
- B. Security for payment. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the Town Manager. (Ord. No. 2011-08 §32(B)).
- C. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of the tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the Town. (Ord. No. 2011-08 §32(C)).

### **3.04.220 Distraint and Sale.**

- A. Unless such property is exempt by state statute from distraint and sale, the Town Manager may sign and issue a warrant directed to any employee or agent of the Town, or any sheriff of any county in the State, commanding the distraint and sale of personal property of the taxpayer on which a lien has been attached for payment of the tax due. (Ord. No. 2011-08 §33(A)).
- B. Such warrant may be issued if such tax due is not paid on or before twenty-one (21) days from the payment date of a notice of assessment, and no protest of such assessment has been timely filed. (Ord. No. 2011-08 §33(B)).
- C. Such warrant may be issued immediately if a jeopardy assessment and demand for payment has been issued. (Ord. No. 2011-08 §33(C)).
- D. If the taxpayer does not volunteer entry into the premises, the Town Manager may apply to the Municipal Court for a warrant authorizing any employee of the Town to search for and

distrain property located within the Town to enforce the collection of the tax due. (Ord. No. 2011-08 §33(D)).

- E. The Town Manager shall demonstrate to the Municipal Court that the premises to which entry is sought contains property that is subject to distraint and sale for tax due. (Ord. No. 2011-08 §33(E)).
- F. If a jeopardy assessment and demand for payment has been issued, the Town Manager shall specify to the Municipal Court why collection of the tax will be jeopardized. (Ord. No. 2011-08 §33(F)).
- G. The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure. (Ord. No. 2011-08 §33(G)).
- H. Disposal of distrained property:
  - 1. A signed inventory of the property distrained shall be made by the Town or its agent. Prior to the sale, the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the tax due and related expenses incurred to date and the time and place of sale.
  - 2. A notice of time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the Town where distraint is made or, in lieu thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where the distraint is made and in at least two (2) other places of general public view within such county.
  - 3. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the Town or its agent for no more than ninety (90) days from the date originally fixed for the sale.
  - 4. The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the Town, and the Town shall file a release of lien thereon. If the property is purchased by the Town, such property may be disposed of in the same manner as other Town property, and the lien thereon shall be released.
  - 5. The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the Town or its agent may accept the higher bid.
  - 6. The property offered for sale may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs no less than twenty-four (24) hours before the sale.
  - 7. The Town or its agent shall issue to each purchaser a certificate of sale, which shall be prima facie evidence of its right to make the sale and transfer to the purchaser of all right, title and interest of the taxpayer in and to the property sold.
    - a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company or association to record the transfer on its books and records.

- b. When the property sold consists of securities or other evidence of debt, the certificate of sale shall be good and valid evidence of title.
  8. Any surplus remaining after satisfaction of the tax due, plus any costs of making the distraint and advertising the sale, may be distributed by the Town, first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second, to the owner or other person having a legal right thereto.
  9. The Finance Director shall submit a written account of the sale to the Town Manager. (Ord. No. 2011-08 §33(H)).
- I. Exempt property. Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract arrangement. (Ord. No. 2011-08 §33(I)).
- J. Return of the property. The taxpayer or any person who claims an ownership interest or right of possession in the distraint property may petition the Town Manager, or the Municipal Court if the property was seized pursuant to warrant issued by the Court, for return of the property.
  1. The grounds for return of the property shall be that the person has a perfected interest in such property that is superior to the Town's interest, or that the property is exempt from the Town's lien.
  2. The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned. (Ord. No. 2011-08 §33(J)).
- K. Status of Tax in Bankruptcy and Receivership. Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors or distrainted for property taxes, all tax due shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of the Finance Director or Town Manager for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant. (Ord. No. 2011-08 §34(A)).

### **3.04.230 Violations, Enforcement and Penalty.**

- A. It shall be a violation of this Chapter to fail to perform any applicable affirmative duty specified in this Chapter, including but not limited to:
  1. The failure of any person engaged in business in the Town to obtain applicable licenses.
  2. The failure of any taxpayer to file a timely return or to make timely payment of any tax due.
  3. The making of any false or fraudulent statement by any person in any return, claim for refund or hearing.

4. The evasion of collection of any sales or use tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due. (Ord. No. 2011-08 §35(A)).
- B. The Finance Director or the Town Manager may direct the issuance of a summons and complaint to appear before the Municipal Court to any person who may be in violation of this Chapter or of the rules and regulations promulgated by the Finance Director or the Town Manager, to enforce this Chapter. (Ord. No. 2011-08 §35(B)).
- C. Violations of this Chapter shall be punishable by a fine of not less than \$100 and not more than \$1000. The Town shall also be entitled to a judgment, which includes its costs and reasonable attorney's fees for the enforcement of this Chapter. Each and every 24-hour continuation of any violation shall constitute a distinct and separate offense. (Ord. No. 2011-08 §35(C)).

### **3.04.240 Statute of Limitations**

- A. Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained herein shall be as follows:
  1. Refunds.
    - a. Any claim for refund for disputed tax shall be submitted to the Town Manager or Finance Director on or before sixty (60) days from the date of such purchase.
    - b. Any claim for refund resulting from a notice of overpayment shall be submitted to the Town Manager or Finance Director on or before thirty (30) days after the date of such notice of overpayment.
    - c. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the Town.
  2. Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due.
  3. Liens. No notice of lien shall be issued more than three (3) years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for each extended period.
  4. Returns.
    - a. When a taxpayer fails or refuses to file a return, the tax due may be assessed and collected at any time.
    - b. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may begin at any time.
  5. Protests. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the Finance Director or the Town Manager in other than written form or after the period allowed in this Section(Ord. No. 2011-08 §36(A)).
- B. The period of limitation may be extended before its expiration.

1. The taxpayer and Town Manager may agree in writing to extend the period.
  2. If the Town provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Chapter, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. Audit period means the 36-month reporting period preceding the date of the notice of audit. (Ord. No. 2011-08 §36(B)).
- C. Performance of an audit does not constitute a waiver or exemption from the statute of limitations or preclude additional audits of the same period within the parameters of this Section. (Ord. No. 2011-08 §36(C)).

### **3.04.250 Enforceability**

- A. The repeal or modification of any portion of this Chapter of the Town of Mountain Village shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for the enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order, which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions. (Ord. No. 2011-08 §38).
- B. All other Chapters or portions thereof inconsistent or conflicting with this Chapter or any portion hereof is hereby repealed to the extent of such inconsistency or conflict. (Ord. No. 2011-08 §39).