

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: December 15, 2009

**AGENDA TITLE: City Manager's Report to City Council Concerning
Construction Use Tax**

PRESENTER: Jane S. Brautigam, City Manager

EXECUTIVE SUMMARY:

This memo is intended to provide the City Council (Council) with a report about the collection of Construction Use Tax in the City of Boulder (City). This Executive Summary will describe the City Manager's determination, which is more fully discussed on pages 2 - 3.

The City Manager's determination includes decisions to:

- (a) uphold the final determinations reached in Construction Use Tax audits completed prior to August 2009 as a part of the City's routine efforts that were not appealed; and
- (b) end collection efforts related to the voluntary compliance program outlined in the August 2009 letters. Voluntary payments made to the City in response to those letters will be refunded.

With regard to item (b) addressed above, reconciliation and audit processes will not be utilized by the City to determine underpayment or overpayment of Construction Use Taxes where building permits were issued during the period of June 1, 2006 and June 30, 2009. However, the City will continue to provide a process to refund overpaid Construction Use Taxes upon request.

Finally, a process to clarify City code provisions and implement corresponding procedures will be undertaken. The input of affected stakeholders will be sought as the City moves forward.

CITY COUNCIL'S ROLE:

The determinations described in this report are being made by the City Manager in her role as the chief administrative officer of the City of Boulder. Because this matter is one of general community concern which has been discussed with City Council, it will be

presented to Council at its Dec. 15, 2009 regular meeting where public comment will be taken. The Council does not need to take action on this matter unless the Council wishes to give specific direction to the City Manager regarding issues of concern to the Council related to the determination.

SUMMARY OF CITY MANAGER DETERMINATION:

With regard to the collection of Construction Use Taxes related to routine audits completed prior to August 2009:

The City has the authority to collect Construction Use Tax, to verify the valuation of the cost of building materials in order to make an accurate calculation of amounts owed, and to perform audits.

During the first half of 2009, the City completed routine Construction Use Tax audits of 16 construction contractors.¹ These audits were not a part of the Construction Use Tax voluntary compliance efforts initiated by the City in August 2009. Since these audits were completed as a part of the City's routine efforts, the final determinations that were not appealed as a result of those audits will stand.

Parties who owe taxes based on these audits will have until Feb. 1, 2010 to make payment arrangements with the City. The period between the suspension of payments to allow for this review and Feb. 1, 2010 will be penalty and interest free. In accordance with Boulder Revised Code (B.R.C.) §3-2-25, any taxpayer who requested a hearing on the Construction Use Tax imposed after receiving a Notice of Final Determination, Assessment, and Demand for Payment or denial of claim for refund within the required time period may continue through the hearing process.²

With regard to the reconciliation and collection of under-collected Construction Use Taxes undertaken by the City since August 2009:

The City failed to reconcile Construction Use Taxes at the conclusion of projects in a consistent manner over a relatively long period. The City's practice has been to enforce the reconciliation requirement only during an audit or when a refund was requested by a

¹ Like other taxing authorities, the City uses a wide variety of factors in deciding how to utilize its limited auditing resources. Some random audits are done and some audits are based upon a sampling of a particular industry or sector. Some audits are based upon evidence. For example, if auditors become aware of advertising by entities that have not filed returns or otherwise become aware of the failure to file returns, the entity will be contacted and may be advised that audits may be conducted. There are instances where information obtained in one audit leads to other entities that may not have fully met their tax obligations. Larger entities tend to be audited more often than smaller ones because the tax consequences tend to be more significant. In addition, various taxing authorities communicate with each other about areas in which auditing resources are most beneficially focused.

² After reviewing specific project related information, a City auditor may contact a taxpayer and offer the option of a full audit or settlement. A taxpayer who has settled a disputed Construction Use Tax matter after being so contacted has waived any right to further process including appeals. In such cases, no refunds will be issued.

taxpayer. That practice contributed to the establishment of a series of community expectations that reconciliation was not required. As a result, collection efforts related to the voluntary compliance program outlined in the August 2009 letters will end.

Construction Use Taxes collected by the City through voluntary payments made as a result of the voluntary compliance letters mailed in August 2009 will be refunded, without interest.

The decision to refund these Construction Use Taxes is limited to the amount collected solely as a result of voluntary payment in response to the letters sent out in August 2009. This decision will only affect projects for which building permits were issued.

With regard to the future collection of Construction Use Taxes:

The City will develop a proposal intended to clarify its regulations and procedures related to the collection of Construction Use Taxes. In doing so, the City will seek to maximize transparency, cooperation and opportunities for public input including input from a group of industry stakeholders.

In the period between the date of this report and Jan. 1, 2010, the City will collect estimated Construction Use Taxes based on valuations using the table adopted on Feb. 17, 2009. Effective Jan. 1, 2010, valuations will be based on the table adopted on Oct. 27, 2009, or the contractor's estimate of value, whichever is highest.

During the period of time between the date of this report and the date upon which new regulations and procedures are implemented, the City does not intend to use its audit resources to attempt collection of additional Construction Use Tax revenues in connection with projects for which estimated taxes were paid at the time of issuance of building permits. As such, reconciliation and audit processes will not be utilized by the City to determine underpayment or overpayment of Construction Use Taxes where building permits were issued during the period of June 1, 2006 and June 30, 2009. However, the City will continue to provide a process to permit refunds of overpaid Construction Use Taxes upon request.

It is important to note that this applies only to reconciliations and/ or audits of the Construction Use Tax. With regard to the audit, reconciliation and filing requirements of other taxes and/ or businesses, the City's processes will continue to operate.

IMPACTS:

- Fiscal: The value of retaining Construction Use Tax payments made pursuant to routine audits completed prior to August 2009 is \$692,140.

The cost of implementing the City Manager determination to refund voluntary tax payments made as a result of the voluntary compliance letters mailed in August 2009 is \$32,498. These funds have not been appropriated or spent.

- Social: There is a social benefit in taking steps to maximize the public's trust in the fairness and transparency of the City's tax practices.

BACKGROUND AND ANALYSIS:

The City has the authority to collect Construction Use Tax, to verify the valuation of the cost of building materials in order to make an accurate calculation of amounts owed, and to perform audits. In exercising this authority, the City performs routine audits.

During the first half of 2009, the City completed routine Construction Use Tax audits of 16 construction contractors. These audits were not a part of the Construction Use Tax voluntary compliance efforts initiated by the City in August 2009.

A general contractor who wishes to appeal the tax debt identified during this audit process may request a hearing. In accordance with B.R.C. §3-2-25, the hearing must be requested within 20 calendar days of the date of the mailing of an Assessment, Notice of Final Determination, Demand for Payment or denial of a claim for refund. In the event the project's general contractor (or taxpayer) fails to request a hearing within the time provided, the project's general contractor (or taxpayer) has waived the right to appeal.³

Contractors, homeowners and lessees who build, reconstruct, alter or improve any building or other structure and who purchase tangible personal property or taxable service for use in the building or structure are required to pay a sales or use tax imposed by the Chapter 3-2 of the B.R.C.

In accordance with Boulder Revised Code §3-2-14(a), those paying such taxes may use one of the following methods to pay applicable sales and use tax:

- (1) Payment to a vendor licensed by the City of tangible property or taxable services at the time and place of purchase;
- (2) Payment at the time a building permit is issued, on an estimated percentage based on the total valuation of the construction contract; or
- (3) Filing a tax return on a monthly or other basis and payment of the tax by the twentieth day of each reporting period.

For those who use payment of an estimated tax at time of building permit issuance, B.R.C. §3-2-18(b) requires that the actual costs of tangible personal property and taxable

³ After reviewing some specific project information, a City auditor may contact a taxpayer and offer the option of a full audit or settlement. This type of contact is one of the initial steps in a formal audit process. A taxpayer who settled a disputed Construction Use Tax matter in this manner has waived any right to further process including appeals.

services be reported upon the completion of each project. (For purposes of this memo, this reporting requirement is called "reconciliation.")

While the City has not consistently required reconciliation when projects are completed, a total of 19 Construction Use Tax reconciliations have occurred over the past five years. Fifteen of the 19 reconciliation processes resulted in a refund to the taxpayers. The City routinely selects construction projects for use tax audits each year. In the last five years, 76 projects were audited. Ten of those processes resulted in refunds.

While completing routine tax audits in late 2008 and early 2009, members of the Finance Department auditing staff observed a pattern in which estimated payments made upon permit issuance were consistently lower than the actual taxes due based upon the completed project costs. It appeared that the trend demonstrated that a valuation table relied upon by the City to estimate value was no longer accurately projecting the full cost of building materials that are used in construction in our area.

As these routine Construction Use Tax audits continued in early 2009, various individual contractors and members of the Planning and Development Services Advisory Group (P&DS) expressed concerns that the on-going audits seemed targeted. In an effort to address the concerns that audits were unfairly targeting certain projects, the Finance Department developed a plan by which homeowners and contractors would be systematically contacted regarding potentially under collected Construction Use Taxes.

A letter for homeowners and contractors who had completed construction projects during the period of August 2006 through August 2009 was prepared, and included a request for voluntary compliance, an educational handout and project reconciliation information.

It was contemplated that the correspondence would eventually go to approximately 1,000 homeowners and contractors. Mailings were split into three separate groups and were designed to reach the largest projects first in the manner detailed below:

Project Value	Letter Mailing Date
\$250,000 +	August 2009
\$60,000 - \$250,000	January 2010
\$20,000 - \$60,000	May 2010

Only the first batch was actually mailed and it included approximately 300 letters. It was mailed to homeowners and contractors in August 2009. The letters were not audits. They brought the situation to the attention of potentially affected parties and provided an opportunity for those who wanted to do so to make voluntary payments and thus avoid penalties and interest if they were later audited.

Thereafter, a number of homeowners and contractors expressed concerns related to the collection effort. There was a sense on the part of these members of the public that the City was changing its procedures in an unfair manner. After an initial evaluation of these concerns, the City suspended future mailings and delayed follow up on the letters for a

period of 60 days to allow independent analysis and review. The City then contracted with Anita White Consulting (Consultants) to assist with a review of the City's Construction Use Tax practices.

PUBLIC FEEDBACK

During the period of Oct. 28 through Nov. 20, the Consultants held four meetings with interested parties. The first meeting involved the stakeholder advisory group (P&DS Advisory Group) that provides feedback to the Public Works and Community Planning and Sustainability Departments on building, engineering and land use issues including proposed code changes. Three subsequent meetings, which were open to the public, were held.

In addition, the City Manager held a public meeting to personally hear concerns from the public. The City Manager will hold a second public meeting on Dec. 14, 2009 to listen to and address concerns that may be expressed as a result of the publication of this report.

In addition, public feedback has included email communications to Council and to the City Manager, an online survey and public participation at various Council meetings.

Feedback from the four focus group meetings with the Consultants is summarized and included in the Consultants' Report (Attachment A).

Finally, the City created a Web page (www.bouldercolorado.gov/constructionusetax) where the public could access this report, the Consultant's full report, the online survey results, and other information pertinent to this issue such as Frequently Asked Questions.

CONTRIBUTING RESOURCES:

In evaluating this matter, the City Manager utilized information from the following resources:

Consultants' Report: As outlined in their Report, an outside Consultant was retained to review the City's Construction Use Tax practices with the following focus:

- (a) Collect and analyze concerns of stakeholders and other interested parties regarding the under collection of Construction Use Taxes;
- (b) Collect input on future improvements to the City's policies, practices and procedures related to the Construction Use Tax;
- (c) Complete a comparative analysis of the City's policies, practices and processes with those identified in the Boulder Revised Code and Tax Regulations, along with those of other Colorado jurisdictions; and

- (d) Compare the City's current Construction Use Tax practices with best municipal financial practices and customer service practices.

This third-party review provided an opportunity to collect and analyze stakeholder input.

City Attorney Review: The City Attorney reviewed applicable provisions of the Boulder Revised Code and related legal issues. That review included use of expertise within the City Attorney's Office as well as consideration of input from an outside consultant. A copy of a City Attorney Summary Opinion dated Dec. 7, 2009, is included as Attachment B.

Stakeholder Input: Stakeholders and interested parties have provided the City Manager with valuable input through correspondence and by participation at a public meeting sponsored by the City Manager on Dec. 4, 2009.

CITY MANAGER FINDINGS:

Based upon these various sources of information, the City Manager found a number of factors to be relevant to her ultimate decision. Among those were the following:

1. The City has the authority to collect Construction Use Tax, to verify the valuation of the cost of building materials in order to make accurate calculations of amounts owed, and to perform audits.
2. During the first half of 2009, the City appropriately exercised its authority through the completion of routine Construction Use Tax audits involving 16 construction contractors. These audits were not a part of the Construction Use Tax voluntary compliance efforts initiated by the City in August 2009.
3. There is confusion in the community about the elements of the Boulder Revised Code dealing with payment of Construction Use Tax. The code contemplates the practice of reconciling the value of materials used in construction in connection with the issuance of a certificate of occupancy. However, over a relatively long period the City has failed to consistently pursue reconciliation of Construction Use Taxes at the conclusion of projects.
4. Legal requirements for obtaining building permits and for payment of Construction Use Tax are conceptually independent of each other. However, the City has tied the two together in order to facilitate ease of payment. While this was done largely for the convenience of members of the building community, an unintended consequence has been to engender confusion with regard to tax payments.
5. When 300 letters requesting reconciliation of Construction Use Tax were sent to homeowners and contractors in August 2009, the City did not fully appreciate the role that the City had played over the years in reinforcing long held expectations of the construction community. This represented a serious misstep that reflects poorly upon

the City administration and was inconsistent with the City's desire to provide excellent customer service.

6. The City's recent efforts to address under collected Construction Use Tax triggered a response that has been both difficult and emotional for affected members of the construction community and the City organization.
7. In moving forward, a concern of primary importance is maximizing credibility and predictability of the City process.

CONCLUSION:

The implementation of various codes and regulations by governmental entities can be difficult and complex. Despite the best of intentions, such governmental actions can create hardships and confusion. That occurred in this circumstance.

In the first half of 2009, the City completed routine Construction Use Tax audits of sixteen construction contractors. These audits were appropriate and were not a part of the Construction Use Tax voluntary compliance efforts initiated by the City in August 2009.

In August 2009, the City issued letters seeking reconciliation of Construction Use Tax by homeowners and contractors. As City Manager, I am not satisfied with the clarity of the City's past practices in this area or with the quality of the City's past communications with those most impacted. For these reasons and others stated in this report, the reconciliation procedures related to potentially under-collected Construction Use Taxes dating from August 2009 will not proceed. Construction Use Taxes collected by the City through voluntary payments made as a result of the voluntary compliance letters mailed in August 2009 will be refunded, without interest.

This is a matter in which the stakes involved for all parties are significant. This is also a situation in which the credibility and self-image of both the stakeholders and City organization is at play. There is no solution that will be satisfactory to all. There is however, the opportunity for the City to move forward in a manner that helps repair relationships within the construction community and re-establish trust. I am committed to that effort. Together, we can and will achieve clear and easily understood processes and procedures relating to the future collection of Construction Use Taxes.

Approved By:

Jane S. Brautigam,
City Manager

ATTACHMENTS:

- A. Anita White Consulting Report entitled “Update on Construction Use Tax Practices in the City of Boulder”
- B. Correspondence dated Dec. 7, 2009 from City Attorney to City Manager Jane Brautigam entitled “City Attorney Summary Opinion – Construction Use Tax Legal Issues”
- C. Boulder Revised Code Chapter 3-2: Sales and Use Tax

December

09

Update on Construction Use Tax Practices in the City of Boulder

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Update on Construction Use Tax Practices in the City of Boulder

This standalone executive summary contains short sections from the report, including:

- a. Background
- b. Project Scope
- c. Report Structure
- d. Major Themes of Stakeholder Meetings
- e. Summary of Findings
- f. Recommendations

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EXECUTIVE SUMMARY

A. Background

In August of this year, the City of Boulder mailed over 300 letters to contractors and homeowners regarding a potential underpayment of construction use taxes on completed building projects. Homeowners, builders, contractors and others responded by informing the City that they were unaware of the need to reconcile the actual completed project cost with the estimated value paid at the time of the building permit and had questions about the language of the City's tax code. Many voiced concern regarding the potential financial impacts of the presumed underpayment of the construction use tax.

Because of these concerns, the City suspended follow-up on the construction use tax letters in September and instituted a 60-day re-examination process. The firm of Anita White Consulting (hereafter referred to as "Consultants") was selected as a third-party reviewer of the city's construction use tax practices.

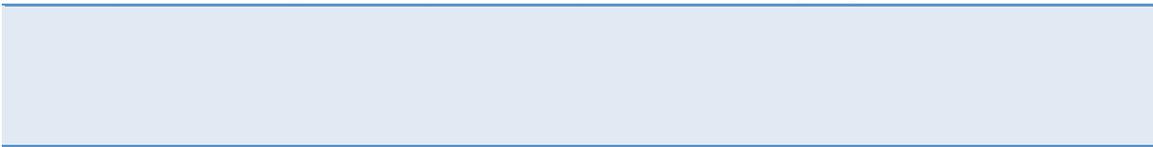
B. Project Scope

This review of the City's construction use tax practices has focused on the following tasks:

- Conducting stakeholder interviews to:
 - a) Identify and analyze the concerns of builders, contractors, homeowners, and other stakeholders regarding the City's recent request for reconciliation of construction use taxes on completed projects; and
 - b) Collect the opinions of stakeholders regarding future improvements in use tax policies, practices, and processes
- Compare the City's policies, practices, and processes with those identified in the Boulder Revised Code (BRC) and Tax Regulations, as well as with those of other Colorado jurisdictions
- Compare the City's practices with best municipal financial practices and customer service practices

C. Major Themes of Stakeholder Meetings.

During the period of October 28 through November 20, the Consultants held four meetings with stakeholders. The first meeting involved the stakeholder liaison group that counsels the Public Works and Community Planning and Sustainability Departments--specifically the staff in the Planning and Development Services fund--on building and land use issues. The three subsequent meetings were open to the public. The majority of attendees at the



public meetings were those who received the August 25, 2009 underpayment letters.

The major concerns expressed by stakeholders are summarized below:

1. Changes in practices, especially those that result in unpredictable costs
2. Valuation and how it is used to calculate construction use taxes
3. Taxes that may have been overpaid (e.g., original over-estimates, no credits for sales taxes paid by subcontractors, etc.)
4. Questions about the role of the general contractor as tax collector
5. Differences between construction use tax and sales tax
6. Lack of formal communications from the City between the April 2009 audit letters and the August 2009 underpayment letters
7. Potential problems with the design of the Reconciliation Form (Form 15) and in the assessments of construction use taxes, as communicated in the August letters
8. Concerns about how the City will handle those situations where a stakeholder has made payments in response to the April audit letters and/or the August voluntary compliance letters
9. Inconsistent communications from the City's Planning and Development staff and Finance Department
10. Difficulties in interpreting the City's tax code and potential inconsistencies between tax code and building code
11. Strong desire to have the City apologize for the manner in which the recent construction use tax issues have been handled

D. Summary of Findings

The complexity of the use tax and its implementation, as well as the lack of full communications about the issues, has led to significant misunderstanding of the issues. The Consultants are still attempting to fully grasp the issues from both the stakeholders' view and from the City's view. Therefore, a summarization of the findings is necessary to allow the reader an appropriate basis for review of the recommendations.

1. The City's practices related to construction use tax reconciliation and audit do not vary significantly from those of other Colorado jurisdictions; that is, most others do require reconciliations and audits, utilize the 50% rate for construction materials, and utilize some form of the valuation table.
2. However, many of the jurisdictions have told the Consultants informally that they do not have the staff to review reconciliations. Therefore, like the City, they have often not emphasized the reconciliation, but have

offered it as a means for contractors to illustrate overpayment of the construction use tax.

3. Thus, for many of the City's contractors, the reconciliation appears to be a new practice, one not in use in other jurisdictions.
4. The City's determination to examine previous payments of the construction use tax is appropriate under best practices for municipal finance departments.
5. The Boulder Revised Code (BRC) is complex and not well understood by builders and contractors. They usually focus on the Building Code and not on the Tax Code, where the construction use tax is addressed in detail.
6. In the past, the City has not enforced the use of reconciliation to closeout construction projects; however, the BRC/Tax Regulation 13 (TR 13) address such a process.
7. In the past, very few construction projects were audited each year and the commonly audited projects were quite large. Thus, the audit process only impacted the largest builders and contractors. This seems also to be true for many of the other Colorado jurisdictions.
8. Because reconciliations have not been required and audits of smaller projects have been very infrequent, stakeholders were led to believe that their original construction use tax estimates were really all that they owed.
9. Further, BRC/TR 13 indicate that a final inspection, resulting in the Certificate of Occupancy, cannot be scheduled until all fees and taxes have been paid. The receipt of a Certificate of Occupancy seemed to confirm that no additional taxes were owed. Permit technicians also confirmed this.
10. When the August underpayment letters went to more than 300 builders, contractors, homeowners, and architects, these stakeholders were unprepared for the potential workload and possible financial impacts which these letters implied. They had to reconcile projects for which they might not have full financial records and they might owe additional taxes.
11. The City seemed to offer two other options: pay the estimated increased amount or prepare for audit.
12. The City's Planning and Development Services staff, who are the first contact for the calculation of the construction use tax, were not fully aware of the potential impacts of the decision to enforce reconciliation. Thus, they may not have provided timely and accurate information.
13. Consequently, stakeholders may have heard different stories depending upon whether they addressed their questions to Planning and Development staff or to Finance staff.
14. Although the Finance Department staff exercised due diligence in reviewing for potential underpayment of the construction use tax, they

- did not practice the best customer service; stakeholders had not been involved in the analysis of the problem. No formal communications went to the stakeholders between April and the August 25th letters.
15. The policies and procedures in the BRC/TR 13 regarding the need for reconciliation of the use taxes did not change, but requiring the reconciliation constituted a change in practice.
 16. The City generally has a very inclusive public process. The lack of communication about this change in practice was a divergence from that usual inclusive process.
 17. At a time of economic distress, the potential for significantly increased taxes on already completed projects led to a difficult situation for the impacted stakeholders. They were faced with tracking down their original property owners to ask for additional taxes, if they could not complete the reconciliations and illustrate appropriate payment of the use tax.
 18. The issues have been difficult to analyze and assess because each stakeholder (including City staff) has a different view of the issues, varying understanding of the historical context, and different experience regarding the construction use tax.
 19. Any recommendations, to be practical, must address the concerns of all stakeholders. This is made even more difficult because some of the recommendations for making the process more understandable will be difficult to implement because of the City's current computer systems. Due to the short timeframe for this project, the Consultants did not have the time for detailed review of these systems.
 20. The recommendations must be based upon the City's proposed approach to the construction use tax. The City will have to involve stakeholders in review of the possible alternative approaches to avoid further anger and misunderstanding. The following recommendations focus on the alternative and recommendations, which support the selected alternatives.

E. One Basic Finding and Several Associated Recommendations

The one basic finding that is important to the determination of practical recommendations relates to the three basic alternatives for assessing and collecting construction use taxes. The advantages and disadvantages of each alternative are discussed below.

Consider the Three Basic Alternatives for Assessing and Collecting Use Taxes on Construction Materials and Consider Which Method Best Addresses the Goals and Concerns of the City and its External Stakeholders

There are three basic alternatives to approaching the construction use tax issue:

- Continue with the valuation approach and utilize the reconciliation process.
- Utilize an approach like that in Denver of encouraging contractors and their subcontractors to pay sales taxes at the point of sale.
- Increase valuations or percentage used to estimate construction material costs, with the goal of eliminating reconciliations.

Each of these methods has advantages and disadvantages, as the following narrative and charts illustrate:

Continue with the valuation approach and utilize the reconciliation process

This approach includes using the valuation table and provides for a reconciliation process, as directed in the current BRC and Tax Regulations. The advantages of this system are that the BRC and Tax Regulations are in place and that the stakeholders have had a long time to consider this option and what it will mean to them. In addition, this is an approach in use in many other Colorado jurisdictions, even if they do not strictly enforce the reconciliation process. The disadvantages include the time necessary for record-keeping on the part of stakeholders and the possibility that the City will be faced with more activity reviewing reconciliations and monitoring refunds and additional payments.

Advantages	Disadvantages
No need to make major changes to BRC and Tax Regulations.	Requires stakeholders to keep records and to spend more time on accounting, as well as requiring that subcontractors maintain better records.
Similar to approaches in other jurisdictions, so should be understood by most contractors.	Requires that City staff spend time on reviewing reconciliations and may require the time to process and maintain records on refunds and additional payments.
Due to all of the recent discussion, stakeholders are now familiar with the basics of this approach.	Does not provide the predictability contractors desire.

Utilize an approach like that in Denver of encouraging contractors and their subcontractors to pay sales taxes at the point of sale

This will be difficult in Boulder because there are few vendors selling construction materials now. It is a preferred method among the contractors, because they are assuming they would not need to do reconciliations. However, it would seem there would be a need to ensure that sales tax had been paid and that would still require record-keeping, and at least some reconciliation for each project. Thus, there would still be similar requirements for record keeping and dealing with unanticipated problems during a fairly major change in practice.

Advantages	Disadvantages
May reduce some of the record-keeping for contractors and subcontractors.	Could require major changes to the BRC and Tax Regulations as well as discussions about processes and how to deal with unanticipated impacts of changes in practice.
Might eventually lead to bringing some vendors back into the City.	Still may not provide the predictability that contractors desire.
Less of a burden on City staff than the full reconciliation approach.	Still may require some additional accounting support from City staff.

Increase valuations or percentage used to estimate construction material costs, with the goal of eliminating reconciliations

Under this scenario, which is apparent in the codes of other jurisdictions (although it is not discussed), contractors pay more upfront, but are not faced with the hassles of a lot of extra record keeping. Reconciliations would only be required when a contractor felt he/she was owed a refund. In fact, this is much like the approach Boulder has taken in the past, when reconciliations were not required for all projects, even though the BRC and Tax Regulations suggested that they were required.

Advantages	Disadvantages
Record keeping would still be required, if contractors felt the amount charged for materials was excessive.	Would require slight changes to aspects of the BRC/TR 13 that relate to reconciliations.
City would not spend time on reconciliations and would use the occasional audit to determine whether the valuations and rate for construction materials were bringing in the expected revenues.	City staff would still have to perform periodic reviews to ensure approach remains effective.
Constitutes a more familiar approach—much like Boulder has done things in the past—and provides the predictability that contractors desire.	City staff might experience an increase in the requests for refunds.

Based upon the alternative chosen, each of the other recommendations could be considered. The Consultants feel that the most practical and efficient approach would be to increase the valuation and/or the percentage assigned to construction materials. Because there is little published information available regarding the current use taxes and whether they have been over- or under-paid, the financial results of making any changes in practice are difficult to predict. We strongly suggest that the City involve stakeholders in further discussions before selecting any specific alternative. The Consultants have attempted to provide general recommendations that will support each use tax alternative. It is also important to note that some recommendations may be difficult to implement, given the City’s current computer systems and available software.

Clarify Construction Use Tax Policies and Practices, Involving Stakeholders From the Beginning

Clarify policies and practices, make the BRC and Tax Regulations consistent with these policies, make instructional materials available, and train all involved City staff. Involvement of stakeholders from beginning to end.

1. Involve stakeholders in a discussion of the problems that led the Finance Department to believe that there was significant underpayment of construction use taxes. Have the Finance Department explain and illustrate their calculations related to this underpayment.
2. Ensure that City Finance staff understand why stakeholders believe that there may also have been significant over-collections of construction use taxes.

3. Work with the stakeholders to redesign the reconciliation form to ensure that it addresses the issues they have identified. It should include the ability to give credit for taxes already paid by subcontractors, for example.
4. Work with interested stakeholders to determine whether the 50% estimate for materials is reasonable for all projects, or is only appropriate for high-end residential remodels and commercial projects.
5. Would using the 60% rate allow most projects to avoid the reconciliation process? Is it more important to avoid the reconciliation process and have minimal auditing, or would stakeholders prefer to use a smaller rate and do the reconciliations?

Based upon the approach finally selected, some methods for improving the use of that approach include:

Further Clarify the Reconciliation Process, Based Upon Stakeholder Input, if That Approach is Selected

1. Review the proposed methods for reconciliation. Consider how County taxes and appropriate tax rates would be handled during any reconciliation process.
2. Consider an approach like that used in Westminster, which divides residential projects into three levels based on use of construction materials.
3. Discuss how use tax calculations will be developed for non-permitted projects.
4. Consider the use of a temporary certificate of occupancy (CO). The CO would become final only upon the acceptance of a final reconciliation of the construction use tax paid.
5. Consider using the contractor's valuation for tenant finishes. The valuation table may not work well for these.
6. Emphasize the fact that the preliminary payment at permit time is a deposit or estimate, which is expected to be reconciled (assuming this is the approach which the City ultimately selects).
7. Make the accounting and documentation requirements clear to all who will be paying use taxes so that they are not faced with finding receipts up to five years later. For example, many contractors file materials invoices by vendor, not by project. Also, many subcontractor invoices are for time and materials in one lump sum. In the future, contractors may file invoices by project, and require subcontractors to submit time and materials separately.
8. Consider changing the references in Tax Regulation 13 and the BRC to acknowledge that property owners are ultimately responsible for the use taxes, even if the contractors collect them.
9. Require that the reconciliation be done no later than 180 days after the completion of a project. The reconciliation would be done by the contractor or the permit applicant if no contractor is involved.

Develop and Publicize Appeal Processes for All Approaches

Ensure that involved stakeholders understand their appeal processes.

Implement Staff and Stakeholder Training for Selected Approach

1. Ensure that the employees of the City's Finance Department and Planning and Development Services understand their roles in this process.
2. Develop instructional materials and customer seminars that explain the use tax and its implementation, no matter which approach is selected.

Update the BRC and the City's Website and Other Documents

1. Update the Code and the City's websites to accurately display all changes to policy, practice, and process, no matter which approach is selected.
2. Regularly solicit questions from those who pay construction use taxes and provide prompt responses on the website.
3. Ensure that all associated documents (e.g., completion letters, certificates of occupancy, etc.) are compliant with and support the chosen alternative.

UPDATES ON CONSTRUCTION USE TAX PRACTICES For the City of Boulder, Colorado

EXECUTIVE SUMMARY

A. Background

In August of this year, the City of Boulder mailed over 300 letters to contractors and homeowners regarding preparing reconciliations for construction use taxes on completed building projects. Homeowners, builders, contractors and others responded by informing the City that they were unaware of the need to reconcile the actual completed project cost with the estimated value paid at the time of the building permit and had questions about the language of the City's tax code. Many voiced concern regarding the potential financial impacts of the presumed underpayment of the construction use tax.

Because of these concerns, the City suspended follow-up on the construction use tax letters in September and instituted a 60-day re-examination process. The firm of Anita White Consulting (hereafter referred to as "Consultants") was selected as a third-party reviewer of the city's construction use tax practices, with the goal of making recommendations to approve the current practices.

B. Project Scope

This review of the City's construction use tax practices has focused on the following tasks:

- Conducting stakeholder interviews to:
 - a) Identify and analyze the concerns of builders, contractors, homeowners, and other stakeholders regarding the City's recent request for reconciliation of construction use taxes on completed projects; and
 - b) Collect the opinions of stakeholders regarding future improvements in use tax policies, practices, and processes
- Comparing the City's policies, practices, and processes with those identified in the Boulder Revised Code (BRC) and Tax Regulations, as well as with those of other Colorado jurisdictions
- Comparing the City's practices with best municipal financial practices and customer service practices

C. One Basic Finding and Several Associated Recommendations

The detailed report contains more detailed findings. The one basic finding that is important to the determination of practical recommendations relates to the three basic alternatives for assessing and collecting construction use taxes. The advantages and disadvantages of each alternative are discussed below.

Consider the Three Basic Alternatives for Assessing and Collecting Use Taxes on Construction Materials and Consider Which Method Best Addresses the Goals and Concerns of the City and its External Stakeholders

There are three basic alternatives to approaching the construction use tax issue:

- Continue with the valuation approach and utilize the reconciliation process.
- Utilize an approach like that in Denver of encouraging contractors and their subcontractors to pay sales taxes at the point of sale.
- Increase valuations or percentage used to estimate construction material costs, with the goal of eliminating reconciliations.

Each of these methods has advantages and disadvantages, as the following narrative and charts illustrate:

Continue with the valuation approach and utilize the reconciliation process

This approach includes using the valuation table and provides for a reconciliation process, as directed in the current BRC and Tax Regulations. The advantages of this system are that the BRC and Tax Regulations are in place and that the stakeholders have had a long time to consider this option and what it will mean to them. In addition, this is an approach in use in many other Colorado jurisdictions, even if they do not strictly enforce the reconciliation process. The disadvantages include the time necessary for record-keeping on the part of stakeholders and the possibility that the City will be faced with more activity reviewing reconciliations and monitoring refunds and additional payments.

Advantages	Disadvantages
No need to make major changes to BRC and Tax Regulations.	Requires stakeholders to keep records and to spend more time on accounting, as well as requiring that subcontractors maintain better records.
Similar to approaches in other jurisdictions, so should be understood by most contractors.	Requires that City staff spend time on reviewing reconciliations and may require the time to process and maintain records on refunds and additional payments.
Due to all of the recent discussion, stakeholders are now familiar with the basics of this approach.	Does not provide the predictability contractors desire.

Utilize an approach like that in Denver of encouraging contractors and their subcontractors to pay sales taxes at the point of sale

This will be difficult in Boulder because there are few vendors selling construction materials now. It is a preferred method among the contractors, because they are assuming they would not need to do reconciliations. However, it would seem there would be a need to ensure that sales tax had been paid and that would still require record-keeping, and at least some reconciliation for each project. Thus, there would still be similar requirements for record keeping and dealing with unanticipated problems during a fairly major change in practice.

Advantages	Disadvantages
May reduce some of the record-keeping for contractors and subcontractors.	Could require major changes to the BRC and Tax Regulations as well as discussions about processes and how to deal with unanticipated impacts of changes in practice.
Might eventually lead to bringing some vendors back into the City.	Still may not provide the predictability that contractors desire.
Less of a burden on City staff than the full reconciliation approach.	Still may require some additional accounting support from City staff.

Increase valuations or percentage used to estimate construction material costs, with the goal of eliminating reconciliations

Under this scenario, which is apparent in the codes of other jurisdictions (although it is not discussed), contractors pay more upfront, but are not faced with the hassles of a lot of extra record keeping. Reconciliations would only be required when a contractor felt he/she was owed a refund. In fact, this is much like the approach Boulder has taken in the past, when reconciliations were not

required for all projects, even though the BRC and Tax Regulations suggested that they were required.

Advantages	Disadvantages
Record keeping would still be required, if contractors felt the amount charged for materials was excessive.	Would require slight changes to aspects of the BRC/TR 13 that relate to reconciliations.
City would not spend time on reconciliations and would use the occasional audit to determine whether the valuations and rate for construction materials were bringing in the expected revenues.	City staff would still have to perform periodic reviews to ensure approach remains effective.
Constitutes a more familiar approach—much like Boulder has done things in the pas—and provides the predictability that contractors desire.	City staff might experience an increase in the requests for refunds.

Based upon the alternative chosen, each of the other recommendations could be considered. The Consultants feel that the most practical and efficient approach would be to increase the valuation and/or the percentage assigned to construction materials. Because there is little published information available regarding the current use taxes and whether they have been over- or under-paid, the financial results of making any changes in practice are difficult to predict. We strongly suggest that the City involve stakeholders in further discussions before selecting any specific alternative. The Consultants have attempted to provide general recommendations that will support each use tax alternative. It is also important to note that some recommendations may be difficult to implement, given the City’s current computer systems and available software.

Clarify Construction Use Tax Policies and Practices, Involving Stakeholders From the Beginning

Clarify policies and practices, make the BRC and Tax Regulations consistent with these policies, make instructional materials available, and train all involved City staff. Involve stakeholders from beginning to end.

1. Involve stakeholders in a discussion of the problems that led the Finance Department to believe that there was significant underpayment of construction use taxes. Have the Finance Department explain and illustrate their calculations related to this underpayment.
2. Ensure that City Finance staff understand why stakeholders believe that there may also have been significant over-collections of construction use taxes.
3. Work with the stakeholders to redesign the reconciliation form to ensure that it addresses the issues they have identified. It should include the ability to give credit for taxes already paid by subcontractors, for example.

4. Work with interested stakeholders to determine whether the 50% estimate for materials is reasonable for all projects, or is only appropriate for high-end residential remodels and commercial projects.
5. Would using the 60% rate allow most projects to avoid the reconciliation process? Is it more important to avoid the reconciliation process and have minimal auditing, or would stakeholders prefer to use a smaller rate and do the reconciliations?

Based upon the approach finally selected, some methods for improving the use of that approach include:

Further Clarify the Reconciliation Process, Based Upon Stakeholder Input, if That Approach is Selected

1. Review the proposed methods for reconciliation. Consider how County taxes and appropriate tax rates would be handled during any reconciliation process.
2. Consider an approach like that used in Westminster, which divides residential projects into three levels based on use of construction materials.
3. Discuss how use tax calculations will be developed for non-permitted projects.
4. Consider the use of a temporary certificate of occupancy (CO). The CO would become final only upon the acceptance of a final reconciliation of the construction use tax paid.
5. Consider using the contractor's valuation for tenant finishes. The valuation table may not work well for these.
6. Emphasize the fact that the preliminary payment at permit time is a deposit or estimate, which is expected to be reconciled (assuming this is the approach which the City ultimately selects).
7. Make the accounting and documentation requirements clear to all who will be paying use taxes so that they are not faced with finding receipts up to five years later. For example, many contractors file materials invoices by vendor, not by project. Also, many subcontractor invoices are for time and materials in one lump sum. In the future, contractors may file invoices by project, and require subcontractors to submit time and materials separately.
8. Consider changing the references in Tax Regulation 13 and the BRC to acknowledge that property owners are ultimately responsible for the use taxes, even if the contractors collect them.
9. Require that the reconciliation be done no later than 180 days after the completion of a project. The reconciliation would be done by the contractor or the permit applicant if no contractor is involved.

Develop and Publicize Appeal Processes for All Approaches

Ensure that involved stakeholders understand their appeal processes.

Implement Staff and Stakeholder Training for Selected Approach

1. Ensure that the employees of the City's Finance Department and Planning and Development Services understand their roles in this process.
2. Develop instructional materials and customer seminars that explain the use tax and its implementation, no matter which approach is selected.

Update the BRC and the City's Website and Other Documents

1. Update the Code and the City's websites to accurately display all changes to policy, practice, and process, no matter which approach is selected.
2. Regularly solicit questions from those who pay construction use taxes and provide prompt responses on the website.
3. Ensure that all associated documents (e.g., completion letters, certificates of occupancy, etc.) are compliant with and support the chosen alternative.

MAIN REPORT

INTRODUCTION

A. Background

In August of this year, the City of Boulder mailed over 300 letters to contractors and homeowners regarding a potential underpayment of construction use taxes on completed building projects. Homeowners, builders, contractors and others responded by informing the City that they were unaware of the need to reconcile the actual completed project cost with the estimated value paid at the time of the building permit and had questions about the language of the City's tax code. Many voiced concern regarding the potential financial impacts of the presumed underpayment of the construction use tax.

Because of these concerns, the City suspended follow-up on the construction use tax letters in September and instituted a 60-day re-examination process. The firm of Anita White Consulting (hereafter referred to as "Consultants") was selected as a third-party reviewer of the city's construction use tax practices.

B. Project Scope

This review of the City's construction use tax practices has focused on the following tasks:

- Conducting stakeholder interviews to:
 - a) Identify and analyze the concerns of builders, contractors, homeowners, and other stakeholders regarding the City's recent request for reconciliation of construction use taxes on completed projects; and
 - b) Collect the opinions of stakeholders regarding future improvements in use tax policies, practices, and processes
- Compare the City's policies, practices, and processes with those identified in the Boulder Revised Code (BRC) and Tax Regulations, as well as with those of other Colorado jurisdictions
- Compare the City's practices with best municipal financial practices and customer service practices

C. Report Structure

The final report contains a detailed review of both the historic context for stakeholder concerns and detailed lists of stakeholder concerns and issues. Additionally, the City's construction use tax practices have been analyzed and compared with the following:

- City's municipal code (BRC) and Tax Regulations as well as information on the City website
- Codes and websites of other Colorado jurisdictions; and
- Municipal best financial and customer service practices.

Detailed appendices contain documents that support the analysis of the historic context (Appendix A), summarize stakeholder concerns (Appendix B), illustrate appropriate aspects of other jurisdictions' practices (Appendix C), and summarize applicable financial and customer service practices (Appendix D).

HISTORIC CONTEXT FOR STAKEHOLDER CONCERNS AND ISSUES

Because of the concerns and issues raised during the stakeholder interviews, the Consultants felt it necessary to provide some background information to assist in understanding the emotional response to the City's letters regarding potential underpayment of construction use taxes on completed projects. During the stakeholder interviews, several key incidents and their dates were discussed. These incidents are included in the report because the stakeholders and the Consultants felt these key incidents helped in understanding stakeholder responses.

June 25, 2003. Administrative Hearing Packet Regarding the Planning and Development Services (P&DS) Fund

The document within the packet that relates to this project is the Building Permit Valuation Table. The then-existing method was for the permit applicant to state a value for each construction project. These values were used both to calculate a host of permit fees and to compute estimated use tax on construction materials. The proposed change was to use a per-square-foot valuation based on a lookup table from the International Codes Council. (The ICC is the organization that produces the International Building Code, IBC. The acronyms are often confused.) There have been revisions to the valuation table proposed in 2003 and, commencing in January 2010, the City will use the higher of stated valuation or lookup-table valuation. Appendix A includes the instructions provided by the ICC on the use of valuation tables. Also included is the announcement of the 2010 changes.

The hearing packet memo for the 2003 Administrative Hearing packet stated, "This is not a proposal to increase building permit related revenue but rather it is a proposal to **increase equity and predictability** among all building permit applicants." (Emphasis added by Consultants to better illustrate the concerns of stakeholders).

Some of the contractors/builders who were interviewed during this project actually served on committees and provided input during this 2003 time frame. According to those who were involved, there was much discussion of ensuring the full recovery of cost for construction-related permits, but not much discussion of the construction use tax.

January to April 2009. Actual Audit Letters for Very Large Projects

Several large projects were selected for audit and letters were sent regarding underpayments. Letters were sent to, among others, 29th Street, Broadway Brownstones, and mixed use projects on Canyon Street. These projects were selected “based on review of the final job cost billings and related permits for work completed . . .” The letter offered: “In lieu of proceeding with a detailed use tax audit the city offers to waive the penalty and interest associated with the underpayment, and accept \$xx,xxx.xx (an exact amount) as full payment in order to finalize this matter.” The letter also offers, as an alternative, a complete audit. “Should you disagree with this estimated valuation and settlement offer, the City will arrange for a comprehensive audit of the project in order to determine the exact amount of any potential underpayment.” Recipients of this letter were confused by the fact that an exact amount was stated, but then in lieu of voluntary compliance, an audit would be done to determine another exact amount. Some were uncertain regarding the source of the initial exact amount. Some letter recipients did arrange to pay the estimated amount of reassessed construction use tax. One participant claimed to have been told that, should he request an audit, he would have to pay for said audit. We believe this was a misunderstanding, but it added to the confusion about what these letters actually meant.

February 17, 2009. Increase in Per-Square-Foot Costs in the ICC Lookup Table

During a City Council study session, the City provided a revised valuation table, which increased the per square foot costs upon which the building permit fees and construction use tax calculations are based. The City’s version of the lookup table and the ICC’s instructions for its use are included in Appendix A. This revised valuation table increased the amount of use tax due in the future, but “ . . .it did not remedy the situation where under-collected use taxes had been identified as owed to the city from past projects.”. Note that, commencing in January 2010, the City will use the higher of stated valuation or lookup-table valuation.

March 11, 2009. Notice of Fee Changes

This Notice of Fee Changes was sent to permit applicants. It announced that square foot construction valuation would be adjusted to a national standard, that permit fees would be decreased, and that valuation for alterations, repairs, remodels, and tenant remodels would be based on square footage. This

change impacted permits currently in review but not paid in full by March 18, 2009. This change would affect “sales and use tax that is collected at the time of permit issuance.”

This is significant because audit letters that went out on April 2 and the August voluntary compliance letters were thought by some recipients to be associated with this notice of fee changes. In fact the two issues were separate. Some builders/contractors ignored the August letters thinking that they contained more information about routine fee changes.

April 28, 2009. A Recipient of One of the April 2 Letters Meets With City Staff to Voice His Concerns

One contractor contacted the Building Department regarding his concerns that City Building and Sales Tax staff were “not on the same page.” His specific concerns included the following:

1. Whether 29th Street was a trigger for these audits? Staff put this project on a fast track in order to get it open. Two-million-dollar projects were permitted with \$200,000 valuations, just to get them through the system. To this contractor, it felt that all other projects were being questioned because of the major underpayments associated with 29th Street.
2. Whether this indicated a change in audit practice? It seemed to him that the rules had changed without any communications about that change.
3. Permit specialists gave no warning of this change in policy and practice. They said nothing about reconciliations or increased audits.
4. This is the worst economy in at least 25 years, and it was bad timing to ask for increased tax payments when we were already experiencing financial distress.
5. Why were we singled out for this audit?
6. The definition of valuation is unclear and flawed.
7. There was a reference to a heretofore-unknown “Form 15” (the use tax reconciliation form). Is it new? Where did it come from? How were we supposed to know about it?
8. In the past, when P&DS made policy changes, they sometimes provided an amnesty period to give people time to adjust. Why wasn’t there such an amnesty on this reconciliation?
9. In spite of these concerns, this stakeholder worked with the property owner and the City on a plan to pay the additional construction use taxes, but he wondered what would come next. Communications with the City were sporadic and largely came as responses to stakeholder concerns. No pro-active overall communications took place.

April-August 20, 2009. Informal Communications Between Those Who Received the April letters and the City

During this time, many informal—and sometimes intensely emotional—communications were exchanged among the various stakeholders and City management and staff via emails and phone calls. Stakeholders received individual responses, but there was no formal, generalized response to stakeholders as a whole during this time.

August 20, 2009. The Council Weekly Information Packet. (WIP).

The City Manager, the Finance Director, and the Executive Director of Public Works communicated a plan to reassess and collect underpaid use taxes on completed construction projects. The memo stated that the up-front collection (at permit time) of use taxes was just an estimate, and that it appeared that these estimates were far below what was actually owed on the purchase of construction materials. “During the normal course of tax audits, a trend was observed. Construction use tax seemed to be consistently under collected at the time that it was calculated and paid.... Audits of tenant finish and remodel construction projects revealed differences between the permit valuation and the actual final construction billing ranging from 83% to 757%. The average difference was 389%.” It should be noted here that there was an implication that projects had been “audited;” however, the following sections illustrate the fact that these were not, at this stage, detailed audits. Final billings received from building permit records seemed to indicate that the original valuations were understated and Finance simply stressed that reconciliations needed to be prepared to ensure that this potential problem was addressed directly.

August 25, 2009. 300 Letters Are Sent Requesting “Voluntary Compliance.”

Three hundred letters went out as described in the WIP. Some recipients ignored the letters (see references under March 11, Notice of Fee Changes). Some saw them as a threat preceding an actual audit. Some saw this as “extortion” or a “massive screw-up.” Several recipients banded together and hired lawyers. Thus, what had been a problem among a small number of audited firms became a headline-generating issue. Two additional rounds of letters were scheduled to go out to another 700 people, but were not sent. The letters indicated that there was a difference between original valuation and final billings, as determined from building permit information. Stakeholders could prepare detailed reconciliations, or voluntarily pay the difference between original valuations and final billings.

September 28, 2009. City Manager Decides to “Re-examine City’s Demand That Nearly 1,000 Contractors Owe Millions in Back Taxes.”

This is reported in the Daily Camera.

October 6, 2009. City Council Meeting Citizen Participation.

About 50 persons signed up to speak on this topic. City Council members seemed somewhat confused about whether the issue had ever been discussed with them, in spite of the August 20th WIP and despite phone calls placed by the Finance Director. The potential impact of the voluntary compliance letters was not apparent to City staff or Council members.

October 22, 2009. Staff Meeting With Anita White and a Decision to Contract.

By this time, there had been several news articles in the Daily Camera, the Boulder County Business Report, and the Journal of Light Construction. The City decides to contract with Anita White and Steve Fisher to conduct the review of construction use tax policies, practices, and processes.

October 28 – November 20, 2009. Consultants Hold Four Meetings With Stakeholders.

The first such meeting was with the official stakeholder liaison group that counsels the Public Works department on building and land use issues. Three subsequent meetings were open to the public. The large majority of attendees were those receiving the 300 August 25th “voluntary compliance” letters. However, several contractors who had not received letters, and at least one non-contractor, attended. A few homeowners who had served as their own contractors, along with architects and others who had received letters, also attended. Considerable input was received. The discussion was unstructured and lively. The notes from these meetings were circulated via email to all who wished to participate. The issues raised at these meetings were many. The major themes of the stakeholder issues are summarized in the next section. Notes from stakeholder meetings, as provided to attendees who gave their email addresses, are contained in Appendix B.

MAJOR THEMES OF STAKEHOLDER CONCERNS AND ISSUES

Predictability of Project Costs

Some of the contractors/builders who spoke to the Consultants during this project had served on committees that provided input during the 2003 studies that preceded the change to a per-square-foot valuation based on the ICC lookup table. As stated above, there was much discussion of ensuring the full recovery of cost for construction-related permits, but not much discussion of impacts of the change on the construction use tax. **Among the most frequently heard objections to re-evaluating the use tax after building permit issuance is unpredictability.** Predictability is important to the relationships among the general contractor, subcontractors, and property owners. No one likes surprise costs. It is also important to financiers. At the time of final inspection and issuance of Certificate of Occupancy, the construction loan typically is repaid from the proceeds of a mortgage loan. All parties assume all fee and tax payments are final at this time. Real estate attorneys who attended the stakeholder sessions were adamant that, in the past, all fees and taxes had been considered paid once the certificate of occupancy was issued.

Multiple Methods of Valuation

The whole notion of valuation is confusing to many. There are three methods of computation of project valuation and calculation of use tax. First, an applicant may either state the contract's value then apply the appropriate use tax rate to 50% of that value. Second, the applicant may apply the per-square-foot value from the lookup table to the project's square footage and apply the tax rate to 50% of this value, or third, the permit applicant may sum all itemized construction materials receipts and pay monthly. The major problem with the first method is that contract amounts change due to change orders. Also, some jobs are done without a contract. The problem with the second approach is that it is based on a national average, and specific projects vary widely. For example (from another city) an inspector had inspected a house with flooring of sheet vinyl and one with gold-flecked Italian marble in the same week. But both structures had used the same per-square-foot value from the table. The problem with the third approach is that itemized receipts are difficult to track. Most materials are apparently being purchased by subcontractors. These are craftsmen, often sole practitioners or small companies, without formal accounting systems.

Taxes May Have Been Overpaid

Another major problem is that taxes may have been over-paid. Many contractors state that 50% over-estimates the cost of materials, particularly on labor-intensive jobs. Many retailers do not honor the Boulder building permit and collect sales taxes at point of sale. There are relatively few building

materials retailers in Boulder. Many subcontractors, particularly in the few hectic weeks prior to project completion, do not retain receipts. Finally, to re-assemble records and to get affidavits of cost from subcontractors up to five years (assuming two years from project start to certificate of occupancy plus the three year audit window) in arrears is nearly impossible.

General Contractor as Tax Collector

Though City Tax Regulation 13 deems the contractor to be the consumer of construction materials, the final burden of cost is on the property owner. The final enforcement option, a property lien, is placed on the owner. This puts contractors and owners in adversarial positions. Many contracts are cost-plus, and the use tax can be a significant item of cost. Often, the person to pull the permit is the architect or the property owner. The contractor may not be involved in the valuation estimate. Planning and Development Services staff may have reduced the valuations from those estimated by the permit applicant. This may be a cause of underpayment.

Construction Use Tax Is Significantly Different from the Sales Tax

Note that the issues discussed here, rarely, if ever, apply to an ordinary retailer of taxable goods, or to auto use tax. Most retailers have sophisticated computer systems that record taxes on the spot, and retain records in auditable form. The cost of an auto is recorded at the point of sale, and that transaction is complete. It is only in this area of construction use tax that there are multiple methods of computation, multiple parties involved, multiple transactions, a lengthy time interval between the first transaction and the last, a major after-the-fact record keeping burden, and conflict regarding who is ultimately responsible for payment. It is a City employee that collects the building permit fees and the use tax and issues the certificate of occupancy (CO), not a retailer. Finally, there is language in the Code that indicates that the final inspection cannot be scheduled until all fees and taxes are paid. Contractors view the CO as a demonstration of full payment of obligations to the City. Contractors interpreted the August voluntary compliance letters as an indication that building inspectors and auditors were in conflict.

Significant Time Passed Between the April Letters and the August Letters With No Formal Communications Between the City and Stakeholders.

There appears to have been no formal communication between the City and stakeholders between the issuance of the April audit letters and the August voluntary compliance letters. The construction community was concerned that there would be more letters like those issued in April. Most contractors assumed there would be further formal communication with the City, but nothing happened until the “voluntary compliance” letters were received in August. The information provided to City Council in the August 20th WIP indicated that audits had identified significant underpayment of the construction use tax. In fact, there appeared to have been few actual audits completed.

Further, news articles following the letters were not accurate, making it appear that builders/contractors had withheld collected use taxes, had miscalculated taxes, or had otherwise behaved inappropriately. The construction community felt that they had been portrayed as “tax cheats.”

Potential Errors in the Construction Tax Assessments and in the Reconciliation Form

Those who received the August voluntary compliance letters had many questions. Some of their questions addressed the Reconciliation Form and some addressed the estimates of underpayment reported to City Council. Their questions included:

1. Since the projects being reviewed may go back as far as five years, what tax percentage should be used (e.g., what tax rate is appropriate for a project that began five years ago, if they prepare a reconciliation in 2009 and there has been a change in the tax rate during that time)?
2. How does the reconciliation form acknowledge those sales taxes paid at point-of-sale by the subcontractors and other members of the construction team? There appears to be no way to include these credits to the use tax on the current reconciliation form.
3. How would County use taxes be considered in the reconciliations and how were they addressed in estimates provided to City Council ?
4. How can we prove that materials really constitute less than 50% of many projects?
5. How are use taxes collected for projects that do not require a building permit?
6. Who is responsible for underpayment of use taxes if the Building staff reduces the valuation amount of the project during the application process?
7. If I ask someone from Building whether I owe anything else, and they say I do not, can I trust that opinion?
8. If there is a change in contractor, who will be assessed any additional use tax at the end of the project?

How Will the City Handle Those Situations Where a Contractor/Builder Has Already Arranged Payments Under the Voluntary Compliance Approach?

Some contractors/builders have made arrangements to pay--or have the property owners pay--amounts identified in the audit letters. Now that they understand the situation, these contractors/builders would like to discuss whether they should have agreed to make these payments.

Planning and Development Services and Finance Appeared to Have Had Different Views of the Issues

Stakeholders who had contacted both Planning and Development Services and Finance received somewhat different responses to some issues. This led them to believe that these two parts of the City had not been talking to each other.

The Code is Difficult to Read and Does Not Appear Consistent

The Code sections related to use tax appear difficult and inconsistent to the stakeholders interviewed. This impression is aggravated by the fact that most builders/contractors are familiar with the building code, but not with the tax code.

In summary, Contractors and Builders said they have no problem paying what is truly owed, but they actually thought they had been paying appropriately. They also question whether anyone really knows what is owed. Further, they would like to find the simplest way to pay, reducing the variability and unpredictability of use tax charges. This means they would prefer no audits or reconciliations, but they are willing to comply in the future, if that is necessary. They would like the City to improve or eliminate the reconciliation and audit processes. They want to understand the accounting issues on the front end so that they can appropriately complete reconciliations, if necessary, and respond to audits on the back end. Some said they would prefer to pay sales taxes at the point of sale. rather than contend with the use tax issues after project completion.

CONSISTENCY WITH CODE REQUIREMENTS

The stakeholders had questions about the current BRC and Tax Regulations and whether the implementation of the reconciliation process was in compliance with the BRC and Tax Regulations. The specific areas of concern to the stakeholders included:

1. Requiring reconciliations of actual project expenditures for construction materials to those originally used to estimate construction use tax
2. Allowing up to three years after project completion for the reconciliations
3. Determining whether construction materials costs are actually 50% of project costs)
4. Requiring audits of actual project expenditures
5. Requiring general contractors to be the collectors of the use tax

The Consultants do not present themselves as attorneys; however, they have reviewed the Boulder Revised Code (BRC) and Tax Regulation 13 (TR 13)--the regulation pertaining to construction use tax. This review was to assess whether the issues of concern to the stakeholders were addressed in the BRC and/or TR 13.

Current policy requires a reconciliation of actual materials expenditures to those estimated at permit issuance

If an estimated tax is paid at permit issuance, then materials should be exempt from sales tax at point-of-sale. The BRC 3-2-7 (B) (3) indicates that construction materials are exempt from sales taxes if a "contractor has prepaid the tax directly to the city on the estimated or actual basis, calculated as a percentage of the construction valuation at the time the building permit is issued." According to current practice, the valuation-based payment is an estimate and would not be "actual." BRC 3-2-18 (b) states, "Contractors who have prepaid an estimate of taxes on construction projects...shall, upon completion of each such project, report the actual costs of tangible personal property and taxable services used therein." There is no form, format, or method identified for reporting these actual costs in the BRC. However, Tax Regulation 13 references "Form 15", which is the Reconciliation Form designed and proposed for newly re-implemented reconciliation process as of August 20, 2009.

Current policy allows up to three years after project completion for the reconciliations

The BRC 3-2-18(c) indicates that "every taxpayer or other person liable to the city for sales or use tax under this title shall keep and preserve for a period of

three years such books, accounts, and records, including without limitation, original sales and purchase records, as may be necessary to determine the amount of tax that the taxpayer is liable to pay or collect.” It is not clear when the three-year period begins; however, it is clear that the City’s policy has always been to allow for up to three years for the reconciliations.

Do construction material costs actually constitute approximately 50% of project costs?

Title 3 of the BRC does not address the 50% factor. However, according to TR 13, for any contract of \$50,000 or more, the 50% factor is utilized. TR 13 also states that Form 15 is used to determine the actual use tax after project completion.

City code authorizes audits of actual project expenditures

BRC 3-2-14 (a-f) implies that there is the possibility of an audit, given that books must remain open for three years and must be open to examination. However, there are few specific references to audits, except under BRC 3-2-19, which relates to a coordinated audit if a taxpayer holds sales tax licenses in at least four other Colorado jurisdictions. According to TR 13, after paying all use tax due using Form 15, a contractor may request an audit.

Requiring general contractors to be the collectors of the use tax

BRC 3-2-14 (a) (2) indicates that “payment (is made) by either the owner, lessee, or general contractor or separately by a subcontractor electing to do so at the time a building or right of way permit is issued, on the estimated percentage basis, based on a percentage of the total valuation of the construction contract...” This seems to indicate that the general contractor is not the only collector and payer of use tax. TR 13, however, states that the contractor is deemed to be the consumer of materials.

In conclusion, between the BRC and TR 13 most of the issues of concern are addressed in some form. However, to the lay reader the policies are sometimes vague, confusing, or inappropriate. Contractors rely on using longstanding practices and readily available City information sources such as Planning and Development Services staff and City websites. It was the City’s longstanding practice to not require reconciliation. It continues to be the City’s longstanding practice to precede major policy changes with considerable public process.

CURRENT PRACTICES AND BEST MANAGEMENT PRACTICES

The Consultants determined that it would be helpful to compare two areas of the City's revised practices to any published best practices.

In the governmental setting, best practices include those that:

- Are widely accepted as standards by knowledgeable professionals
- Are proven to be efficient and effective in most organizations, and
- Reflect 'state of the art' thinking.

Financial and Revenue Management Practices

There are many published best practices for governmental budgeting and accounting. Among the practices recommended is that each revenue source be audited periodically. Every current revenue source should be studied carefully to determine who pays the revenue, how much revenue is coming in, when the revenue source was last audited, and whether the recent revenues have been achieving the results anticipated by finance professionals. Thus, Finance staff were correct in examining potential under-recovery of construction use taxes. In Appendix D, the Consultants have included sections from training sessions provided to governmental finance staff that illustrate that auditing revenue sources is a good practice. In addition, a Government Finance Officers Association (GFOA) on-line publication details the first step in assessing fiscal first aid—audit revenues.

However, other best revenue management best practices, such as keeping stakeholders informed, involving stakeholders in the analysis of potential under-recovery, and assessing the financial impact on payers, were not utilized. It is clear that the Finance staff did not expect such a negative response to their enforcement of the reconciliation process already stated in the BRC/Tax Regulations.

Customer Service Practices

Customer service communications include:

- Timely communications about new processes, regulations, and technology.
- Project-specific communications with individual stakeholders--in this case that would be the builders, contractors, architects, and homeowners who received letters about the construction use potential underpayments in August, as well as those who are still expecting such letters

In both cases, there were inconsistencies with the usual approach the City takes in dealing with stakeholders. Customers of the Planning and Development Services Department have come to expect input into policy changes on the front end and clear information about these changes on the back end. In this case, the only public information preceding the August 25th underpayment letters was contained in the August 20th WIP. The only public discussion was at the October 6th Council meeting.

The City's websites were not promptly and clearly updated to comply with the WIP and with the letters, requiring reconciliations. Further, Building Division staff and the Finance staff were not consistent in their understanding of the issues and associated communications regarding the reconciliation process and potential underpayment of the construction use tax.

Thus, in general, although the Finance staff were conscientious in their approach to analyzing the City's revenue sources, they did not conform to best practices in customer services related to fiscal issues, as illustrated in Appendix D. Communications about the new processes were not timely in that the letters implementing the new processes came to the customers before any discussions with stakeholders took place. In addition, project-specific discussions were largely informal and unsatisfactory, in the eyes of the stakeholders.

COMPARATIVE PRACTICES

Based upon the questions voiced about consistency between the BRC/TR 13 treatments of specific issues, the Consultants also compared those issues with the codes of other jurisdictions. It is important to note that, due to the short time frame for this project, we did not specifically interview other jurisdictions in detail and that the Consultants are not attorneys. We do not, therefore, provide legal opinions, but do attempt to compare the information in other jurisdictions' codes and websites regarding a set of specific issues. We also cannot guarantee that each jurisdiction follows the code or the practices explained on its website.

Requiring reconciliations of actual project expenditures for construction materials to those originally used to estimate construction use tax. Allowing up to three years after project completion for reconciliation.

Any jurisdiction that uses an estimated construction use tax at the beginning of a project also officially requires a reconciliation at the end of that project. In some cases, jurisdictions seem to anticipate having to refund from the original estimate. For example, Aurora's code states that anyone who has paid an estimate based on the 50% rate can provide evidence of overpayment within one year of the issuance of a certificate of occupancy or final inspection. Lakewood clearly states that original use tax payments are "deposits" and if a taxpayer elects to use an estimate, then that taxpayer need not file periodic tax returns. If the Finance Director should note, within three years of the Certificate of Occupancy or the date of the final inspection, that actual materials costs exceeded the deposit, then additional tax is due within 30 days.

Similarly, Golden also refers to the initial use tax payment as a "deposit." The taxpayer is expected to calculate the final costs of construction materials and remit any outstanding balance within 180 days of the issuance of the certificate of occupancy. Westminster refers to "estimated prepayments" and states "use tax on the actual cost of materials may be subsequently determined through audit." Westminster mails a "Construction Project Cost Report" to the general contractor when a building permit is issued. The reconciliation is due within 30 days of the issuance of a Certificate of Occupancy.

Centennial's ordinance states that the estimated use tax is paid based on the project's valuation and that the actual cost of materials may be subsequently determined through audit. Reconciliations are required, since Centennial states that no overpayment will be refunded unless a claim is filed and submitted within one year of use or consumption. In Lakewood, upon issuance of the certificate of occupancy, the general contractor receives a reminder to reconcile

the use tax deposit for the project and that the City may audit up to three years from the date of certificate of occupancy.

Most jurisdictions identify reconciliation processes in their code, tax guides, or websites. However, much like the City, many of them do not enforce the reconciliation process. Thus, many stakeholders who have worked in other jurisdictions stated that they had rarely prepared reconciliations.

Accuracy of the 50% factor for construction materials

The majority of local jurisdictions utilize the 50% rate for estimating construction material costs. Greenwood Village uses 60%, but also ignores the first \$3,500 in construction materials. Wheat Ridge also uses the 60% estimate. El Paso County estimates the value of materials at 40%.

Requiring audits of actual project expenditures

Colorado jurisdictions have various methods for auditing. In the current economic setting, many jurisdictions do not have the staff to perform as many audits as they might wish; however, all reserve the right to audit. Many jurisdictions indicate that use tax audits simply form a part of their audit work plan and are chosen on some statistical basis. We were unable to obtain information from the comparative jurisdictions about percentage of use tax under- or over-payments.

Requiring general contractors to be the collectors of the use tax

Many codes refer to the general contractor as the collector of use tax. Lakewood's website states that the property owner is ultimately responsible for any use tax liability, even though the general contractor usually pays the use tax deposit. Westminster states that payment of the building use tax is the responsibility of the general contractor. Denver also considers the contractor to be the consumer of construction materials.

SUMMARY OF FINDINGS

The complexity of the use tax and its implementation, as well as the lack of full communications about the issues, has led to significant misunderstanding of the issues. The Consultants are still attempting to fully grasp the issues from both the stakeholders' view and from the City's view. Therefore, a summarization of the findings is necessary to allow the reader an appropriate basis for review of the recommendations.

1. The City's practices related to construction use tax reconciliation and audit do not vary significantly from those of other Colorado jurisdictions; that is, most others do require reconciliations and audits, utilize the 50% rate for construction materials, and utilize some form of the valuation table.
2. However, many of the jurisdictions have told the Consultants informally that they do not have the staff to review reconciliations. Therefore, like the City, they have often not emphasized the reconciliation, but have offered it as a means for contractors to illustrate overpayment of the construction use tax.
3. Thus, for many of the City's contractors, the reconciliation appears to be a new practice, one not in use in other jurisdictions.
4. The City's determination to examine previous payments of the construction use tax is appropriate under best practices for municipal finance departments.
5. The Boulder Revised Code (BRC) is complex and not well understood by builders and contractors. They usually focus on the Building Code and not on the Tax Code, where the construction use tax is addressed in detail.
6. In the past, the City has not enforced the use of reconciliation to closeout construction projects; however, the BRC/Tax Regulation 13 (TR 13) address such a process.
7. In the past, very few construction projects were audited each year and the commonly audited projects were quite large. Thus, the audit process only impacted the largest builders and contractors. This seems also to be true for many of the other Colorado jurisdictions.
8. Because reconciliations have not been required and audits of smaller projects have been very infrequent, stakeholders were led to believe that their original construction use tax estimates were really all that they owed.
9. Further, BRC/TR 13 indicate that a final inspection, resulting in the Certificate of Occupancy, cannot be scheduled until all fees and taxes have been paid. The receipt of a Certificate of Occupancy seemed to

confirm that no additional taxes were owed. Permit technicians also confirmed this.

10. When the August underpayment letters went to more than 300 builders, contractors, homeowners, and architects, these stakeholders were unprepared for the potential workload and possible financial impacts which these letters implied. They had to reconcile projects for which they might not have full financial records and they might owe additional taxes.
11. The City seemed to offer two other options: pay the estimated increased amount or prepare for audit.
12. The City's Planning and Development Services staff, who are the first contact for the calculation of the construction use tax, were not fully aware of the potential impacts of the decision to enforce reconciliation. Thus, they may not have provided timely and accurate information.
13. Consequently, stakeholders may have heard different stories depending upon whether they addressed their questions to Planning and Development staff or to Finance staff.
14. Although the Finance Department staff exercised due diligence in reviewing for potential underpayment of the construction use tax, they did not practice the best customer service; stakeholders had not been involved in the analysis of the problem. No formal communications went to the stakeholders between April and the August 25th letters.
15. The policies and procedures in the BRC/TR 13 regarding the need for reconciliation of the use taxes did not change, but requiring the reconciliation constituted a change in practice.
16. The City generally has a very inclusive public process. The lack of communication about this change in practice was a divergence from that usual inclusive process.
17. At a time of economic distress, the potential for significantly increased taxes on already completed projects led to a difficult situation for the impacted stakeholders. They were faced with tracking down their original property owners to ask for additional taxes, if they could not complete the reconciliations and illustrate appropriate payment of the use tax.
18. The issues have been difficult to analyze and assess because each stakeholder (including City staff) has a different view of the issues, varying understanding of the historical context, and different experience regarding the construction use tax.
19. Any recommendations, to be practical, must address the concerns of all stakeholders. This is made even more difficult because some of the recommendations for making the process more understandable will be difficult to implement because of the City's current computer systems. Due to the short timeframe for this project, the Consultants did not have the time for detailed review of these systems.

20. The recommendations must be based upon the City's proposed approach to the construction use tax. The City will have to involve stakeholders in review of the possible alternative approaches to avoid further anger and misunderstanding. The following recommendations focus on the alternative and recommendations, which support the selected alternatives.

RECOMMENDATIONS

One Basic Finding and Several Associated Recommendations

The detailed report contains more detailed findings. The one basic finding that is important to the determination of practical recommendations relates to the three basic alternatives for assessing and collecting construction use taxes. The advantages and disadvantages of each alternative are discussed below.

Consider the Three Basic Alternatives for Assessing and Collecting Use Taxes on Construction Materials and Consider Which Method Best Addresses the Goals and Concerns of the City and its External Stakeholders

There are three basic alternatives to approaching the construction use tax issue:

- Continue with the valuation approach and utilize the reconciliation process.
- Utilize an approach like that in Denver of encouraging contractors and their subcontractors to pay sales taxes at the point of sale.
- Increase valuations or percentage used to estimate construction material costs, with the goal of eliminating reconciliations.

Each of these methods has advantages and disadvantages, as the following narrative and charts illustrate:

Continue with the valuation approach and utilize the reconciliation process

This approach includes using the valuation table and provides for a reconciliation process, as directed in the current BRC and Tax Regulations. The advantages of this system are that the BRC and Tax Regulations are in place and that the stakeholders have had a long time to consider this option and what it will mean to them. In addition, this is an approach in use in many other Colorado jurisdictions, even if they do not strictly enforce the reconciliation process. The disadvantages include the time necessary for record-keeping on the part of stakeholders and the possibility that the City will be faced with more activity reviewing reconciliations and monitoring refunds and additional payments.

Advantages	Disadvantages
No need to make major changes to BRC and Tax Regulations.	Requires stakeholders to keep records and to spend more time on accounting, as well as requiring that subcontractors maintain better records.
Similar to approaches in other jurisdictions, so should be understood by most contractors.	Requires that City staff spend time on reviewing reconciliations and may require the time to process and maintain records on refunds and additional payments.
Due to all of the recent discussion, stakeholders are now familiar with the basics of this approach.	Does not provide the predictability contractors desire.

Utilize an approach like that in Denver of encouraging contractors and their subcontractors to pay sales taxes at the point of sale

This will be difficult in Boulder because there are few vendors selling construction materials now. It is a preferred method among the contractors, because they are assuming they would not need to do reconciliations. However, it would seem there would be a need to ensure that sales tax had been paid and that would still require record-keeping, and at least some reconciliation for each project. Thus, there would still be similar requirements for record keeping and dealing with unanticipated problems during a fairly major change in practice.

Advantages	Disadvantages
May reduce some of the record-keeping for contractors and subcontractors.	Could require major changes to the BRC and Tax Regulations as well as discussions about processes and how to deal with unanticipated impacts of changes in practice.
Might eventually lead to bringing some vendors back into the City.	Still may not provide the predictability that contractors desire.
Less of a burden on City staff than the full reconciliation approach.	Still may require some additional accounting support from City staff.

Increase valuations or percentage used to estimate construction material costs, with the goal of eliminating reconciliations

Under this scenario, which is apparent in the codes of other jurisdictions (although it is not discussed), contractors pay more upfront, but are not faced with the hassles of a lot of extra record keeping. Reconciliations would only be required when a contractor felt he/she was owed a refund. In fact, this is much like the approach Boulder has taken in the past, when reconciliations were not

required for all projects, even though the BRC and Tax Regulations suggested that they were required.

Advantages	Disadvantages
Record keeping would still be required, if contractors felt the amount charged for materials was excessive.	Would require slight changes to aspects of the BRC/TR 13 that relate to reconciliations.
City would not spend time on reconciliations and would use the occasional audit to determine whether the valuations and rate for construction materials were bringing in the expected revenues.	City staff would still have to perform periodic reviews to ensure approach remains effective.
Constitutes a more familiar approach—much like Boulder has done things in the past—and provides the predictability that contractors desire.	City staff might experience an increase in the requests for refunds.

Based upon the alternative chosen, each of the other recommendations could be considered. The Consultants feel that the most practical and efficient approach would be to increase the valuation and/or the percentage assigned to construction materials. Because there is little published information available regarding the current use taxes and whether they have been over- or under-paid, the financial results of making any changes in practice are difficult to predict. We strongly suggest that the City involve stakeholders in further discussions before selecting any specific alternative. The Consultants have attempted to provide general recommendations that will support each use tax alternative. It is also important to note that some recommendations may be difficult to implement, given the City’s current computer systems and available software.

Clarify Construction Use Tax Policies and Practices, Involving Stakeholders From the Beginning

Clarify policies and practices, make the BRC and Tax Regulations consistent with these policies, make instructional materials available, and train all involved City staff. Involve stakeholders from beginning to end.

1. Involve stakeholders in a discussion of the problems that led the Finance Department to believe that there was significant underpayment of construction use taxes. Have the Finance Department explain and illustrate their calculations related to this underpayment.
2. Ensure that City Finance staff understand why stakeholders believe that there may also have been significant over-collections of construction use taxes.
3. Work with the stakeholders to redesign the reconciliation form to ensure that it addresses the issues they have identified. It should include the ability to give credit for taxes already paid by subcontractors, for example.

4. Work with interested stakeholders to determine whether the 50% estimate for materials is reasonable for all projects, or is only appropriate for high-end residential remodels and commercial projects.
5. Would using the 60% rate allow most projects to avoid the reconciliation process? Is it more important to avoid the reconciliation process and have minimal auditing, or would stakeholders prefer to use a smaller rate and do the reconciliations?

Based upon the approach finally selected, some methods for improving the use of that approach include:

Further Clarify the Reconciliation Process, Based Upon Stakeholder Input, if That Approach is Selected

1. Review the proposed methods for reconciliation. Consider how County taxes and appropriate tax rates would be handled during any reconciliation process.
2. Consider an approach like that used in Westminster, which divides residential projects into three levels based on use of construction materials.
3. Discuss how use tax calculations will be developed for non-permitted projects.
4. Consider the use of a temporary certificate of occupancy (CO). The CO would become final only upon the acceptance of a final reconciliation of the construction use tax paid.
5. Consider using the contractor's valuation for tenant finishes. The valuation table may not work well for these.
6. Emphasize the fact that the preliminary payment at permit time is a deposit or estimate, which is expected to be reconciled (assuming this is the approach which the City ultimately selects).
7. Make the accounting and documentation requirements clear to all who will be paying use taxes so that they are not faced with finding receipts up to five years later. For example, many contractors file materials invoices by vendor, not by project. Also, many subcontractor invoices are for time and materials in one lump sum. In the future, contractors may file invoices by project, and require subcontractors to submit time and materials separately.
8. Consider changing the references in Tax Regulation 13 and the BRC to acknowledge that property owners are ultimately responsible for the use taxes, even if the contractors collect them.
9. Require that the reconciliation be done no later than 180 days after the completion of a project. The reconciliation would be done by the contractor or the permit applicant if no contractor is involved.

Develop and Publicize Appeal Processes for All Approaches

Ensure that involved stakeholders understand their appeal processes.

Implement Staff and Stakeholder Training for Selected Approach

1. Ensure that the employees of the City's Finance Department and Planning and Development Services understand their roles in this process.
2. Develop instructional materials and customer seminars that explain the use tax and its implementation, no matter which approach is selected.

Update the BRC and the City's Website and Other Documents

1. Update the Code and the City's websites to accurately display all changes to policy, practice, and process, no matter which approach is selected.
2. Regularly solicit questions from those who pay construction use taxes and provide prompt responses on the website.
3. Ensure that all associated documents (e.g., completion letters, certificates of occupancy, etc.) are compliant with and support the chosen alternative.

NOTICE OF 2010 FEE CHANGES

On January 4, 2010, the following changes will take effect:

Building Permit Fees & Construction Use Taxes

- Valuation will be determined by the City of Boulder Valuation Table and the estimated project valuation provided by the applicant at time of permit application. ***The higher of the two valuations will be used to calculate the building permit fees and construction use tax.***
- The square foot construction costs in the City of Boulder Valuation Table will be updated with the July-August 2009 cost data as published by the International Code Council.*

****This change may also affect the construction use tax that is collected at the time of permit issuance.***

Development Excise Taxes and Impact Fees

- Capital facility impact fees will be collected for capital improvements to serve new development:
 - Residential development will be charged fire, police, human services, library, municipal facilities and parks and recreation impact fees based on unit size.
 - Residential additions will be charged on net additional square footage.
 - Non-residential development will be charged fire, police and municipal facilities impact fees based on square footage by type of use.
 - Redevelopment will be charged for net new square footage and a change of use.
- Development Excise Tax will continue to be collected for park land acquisition (residential development) and transportation (residential and non-residential development).
- Education Excise Tax will no longer be collected on residential development.

Compatible Development

- Building Permit Plan Check Fees will be ***fifty percent of the building permit fee*** for single family residential development that is in the RR-1, RR-2, RE, RL-1, RMX-1; and detached single family in RL-2 on lots larger than 8,000 square feet, and that are not within the boundaries of a planned development, planned residential development, planned unit development, or an approved site review; or shown on appendix H of Title 9, Land Use Code.



CITY OF BOULDER
Planning and Development Services

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Construction Permit Square Foot Valuation Rates

in effect as of 6/26/2009

The International Code Council Building Valuation Data was used to establish the valuation rates for each building use and construction type. The rates are for new construction. All other are a percentage of the new rate (except unfinished basement) as shown. These rates are subject to annual change.

<u>Scope</u>	<u>NonResidential</u>	<u>Residential</u>
Addition	100%	100%
Alteration	50%	50%
Core and Shell	75%	75%
New	100%	100%
Remodel	50%	50%
Repair	50%	50%
Tenant Finish	50%	50%
Tenant Remodel	50%	50%
Basement Finish	N/A	80%
Unfinished Basement	N/A	\$15.00 per square foot

Group	Building Use	Type of Construction								
		I-A	I-B	II-A	II-B	III-A	III-B	IV	V-A	V-B
A-1	Assembly <i>Theater</i>	177.62	171.29	166.88	159.10	148.75	143.82	153.43	134.10	128.49
A-2	Assembly <i>Nightclub</i>	149.94	145.74	142.04	136.49	128.53	124.91	131.71	116.50	112.58
A-2	Assembly <i>Restaurant</i>	148.94	144.74	140.04	135.49	126.53	123.91	130.71	114.50	111.58
A-3	Assembly <i>Library, Museum, Community Hall</i>	152.81	146.48	141.07	134.30	122.33	118.97	128.63	108.26	103.65
A-3	Assembly <i>Religious</i>	180.72	174.39	169.98	162.21	151.82	146.89	156.54	137.18	131.57
A-4	Assembly <i>Arena</i>	176.62	170.29	164.88	158.10	146.75	142.82	152.43	132.10	127.49
A-5	Assembly <i>Amusement/Recreational - Indoor, Amusement/Recreational - Outdoor</i>	176.62	170.29	164.88	158.10	146.75	142.82	152.43	132.10	127.49
B	Business <i>Financial Institution, Government Uses, Medical and Dental Clinics, Office(Administrative, Professional, Technical), Personal Service, Research & Development</i>	154.16	148.70	144.00	137.27	125.07	120.41	131.97	109.81	105.37
E	Educational <i>Schools/Educational</i>	166.52	160.91	156.34	149.52	140.14	132.98	144.59	123.34	118.69
F-1	Factory and Industrial (moderate hazard) <i>Manufacturing-Moderate Hazard, Service Industrial-Moderate Hazard</i>	92.68	88.42	83.70	80.93	72.45	69.29	77.68	59.67	56.50
F-2	Factory and Industrial (low hazard) <i>Manufacturing-Low Hazard, Service Industrial-Low Hazard, Public Works/Utilities, Telecommunications</i>	91.68	87.42	83.70	79.93	72.45	68.29	76.68	59.67	55.50

Group	Building Use	Type of Construction								
		I-A	I-B	II-A	II-B	III-A	III-B	IV	V-A	V-B
H-1	High Hazard <i>High Hazard (explosive)</i>	86.84	82.58	78.86	75.09	67.79	63.63	71.84	55.02	N.P.
H-2	High Hazard <i>High Hazard (highly flammable)</i>	86.84	82.58	78.86	75.09	67.79	63.63	71.84	55.02	50.85
H-3	High Hazard <i>High Hazard (flammable)</i>	86.84	82.58	78.86	75.09	67.79	63.63	71.84	55.02	50.85
H-4	High Hazard <i>High Hazard (corrosive and/or toxic)</i>	86.84	82.58	78.86	75.09	67.79	63.63	71.84	55.02	50.85
H-5	High Hazard <i>High Hazard (semiconductor type materials)</i>	154.16	148.70	144.00	137.27	125.07	120.41	131.97	109.81	105.37
I-1	Institutional <i>Assisted living</i>	152.30	147.08	143.14	137.34	128.24	124.73	138.61	116.09	111.54
I-2	Institutional <i>Hospital</i>	256.26	250.80	246.11	239.38	226.55	N.P.	234.08	211.31	N.P.
I-3	Institutional <i>Nursing Home</i>	179.18	173.72	169.02	162.30	150.51	N.P.	157.00	135.27	N.P.
I-3	Institutional <i>Prison</i>	174.99	169.52	164.83	158.10	147.16	141.52	152.80	131.92	125.48
I-4	Institutional <i>Day Care</i>	152.30	147.08	143.14	137.34	128.24	124.73	138.61	116.09	111.54
M	Mercantile <i>Commercial/Retail, Wholesale</i>	111.44	107.24	102.53	97.99	89.62	87.00	93.21	77.59	74.67
R-1	Residential <i>Boarding House</i>	154.24	149.02	145.08	139.28	129.95	126.44	140.32	117.80	113.25
R-2	Residential <i>Motel/Hotel/Bed & Breakfast, Multifamily Dwellings</i>	129.33	124.11	120.17	114.37	105.16	101.65	115.53	93.01	88.46
R-3	Residential <i>Manufactured/Mobile Home</i>	N.P.	N.P.	N.P.	N.P.	N.P.	N.P.	N.P.	N.P.	82.00
R-3	Residential <i>Single Family Attached Dwelling, Single Family Detached Dwelling, Studio, Townhomes</i>	122.11	118.76	115.86	112.68	108.62	105.77	110.77	101.74	95.91
R-4	Residential <i>Residential Care</i>	152.30	147.08	143.14	137.34	128.24	124.73	138.61	116.09	111.54
S-1	Storage (moderate hazard) <i>Service Station/Vehicular Repair, Warehousing-Moderate Hazard</i>	85.84	81.58	76.86	74.09	65.79	62.63	70.84	53.02	49.85
S-2	Storage (low hazard) <i>Parking Garage, Warehousing-Low Hazard</i>	84.84	80.58	76.86	73.09	65.79	61.63	69.84	53.02	48.85
U	Utility (miscellaneous) <i>Carport - Attached, Carport - Detached, Deck, Patio Cover, Porch</i>	N.P.	N.P.	N.P.	N.P.	N.P.	N.P.	N.P.	19.09	19.09
U	Utility (miscellaneous) <i>Garage - Attached, Garage - Detached, Shed, Shop, Swimming Pool</i>	N.P.	N.P.	N.P.	N.P.	N.P.	N.P.	N.P.	39.23	37.34

N.P. = not permitted

BUILDING VALUATION DATA

The International Code Council® is pleased to provide the following Building Valuation Data (BVD) for its members. As indicated in the May 2003 issue of the *Building Safety Journal*™, ICC will now publish one data sheet in an effort to move toward complete consolidation and provide the most efficient set of information for jurisdictions to use. ICC strongly recommends that all jurisdictions and other interested parties actively evaluate and assess the impact of the new BVD table before utilizing it in their current code enforcement activities.

The BVD table provides two main functions. In addition to providing the "average" construction costs per square foot, the data can be used in determining permit fees for a jurisdiction as well as calculating the anticipated plan review fees charged by the ICC plan review service. Permit fee schedules are addressed in Section 108.2 of the *2003 International Building Code*® (IBC®) and Section 108.3 addresses building permit valuations. The permit fees can be established by using the BVD table and a Permit Fee Multiplier, which is based on the total construction value within the jurisdiction for the past year. The Square Foot Construction Cost table presents factors that reflect relative value of one construction classification/occupancy group to another so that more expensive construction is assessed higher permit fees than less expensive construction.

The resulting BVD table was compiled by ICC using the Marshall Valuation Service, as published by the Marshall and Swift Publication Company, Los Angeles, California. ICC has developed these data to aid jurisdictions in determining permit fees. It is important to note that while this BVD table does determine an estimated value of a building (i.e., gross area x square foot construction cost), the data are only intended to be used for determining permit fees for a jurisdiction. This data table is not intended to be used as an estimating guide because the data only reflect average costs and are not representative of specific construction.

The degree of precision is sufficient for the intended purpose, which is to establish permit fees so as to fund code compliance activities. The BVD table provides jurisdictions with a simplified way for determining the estimated value of a building that does not rely on the permit applicant to determine the cost of construction. Therefore, the bidding process for a particular job and other associated factors do not affect the value of a building for determining the permit fee. Whether a specific project is bid at a cost above or below the computed value of construction does not affect the permit fee because the cost of related code enforcement activities is not directly affected by the bid process and results.

BUILDING VALUATION

The building valuation data in Table 1 represent average valuations for most buildings. In conjunction with IBC Section 108.3, these data are offered as an aid for the building official for determining if the permit valuation is underestimated. Again it should be noted when using these data that these are "average" costs based on typical construction methods for each occupancy group and type of construction. The average costs include structural, electrical, plumbing, mechanical, interior finish, normal site preparation, architectural and design fees, overhead, and profit. The data represent a national average and must be modified using the appropriate regional cost modifier from Table 2.

Permit Fee Multiplier

Determine the Permit Fee Multiplier:

1. Based on historical records, determine the total annual construction value which has occurred within the jurisdiction in the previous year.
2. Determine the percentage (%) of the building department budget expected to be provided by building permit revenue.

$$\text{Permit Fee Multiplier} = \frac{\text{Bldg. Dept. Budget} \times (\%)}{\text{Total Annual Construction Value}}$$

Example

The building department operates on a \$300,000 budget, and it expects to cover 75 percent of that with building permit fees. The total annual construction value which occurred within the jurisdiction in the previous year was \$30,000,000.

$$\text{Permit Fee Multiplier} = \frac{\$300,000 \times 75\%}{\$30,000,000} = 0.0075$$

Permit Fee

The permit fee is determined using the building gross area, the Square Foot Construction Cost, the Regional Cost Modifier and the Permit Fee Multiplier.

$$\text{Permit Fee} = \text{Gross Area} \times \text{Square Foot Construction Cost} \times \text{Regional Cost Modifier} \times \text{Permit Fee Multiplier}$$

Example

Type of Construction: IIB

Group: B

Height: 2 stories

Area: 1st story = 8,000 sq. ft., 2nd story = 8,000 sq. ft.

Regional Cost Modifier (New York) = 1.03

Permit Fee Multiplier = 0.0075

1. Gross area: Business = 2 stories \times 8,000 sq. ft. = 16,000 sq. ft.

2. Square Foot Construction Cost (see Table 1): B/IIB = \$106.56/ft²

3. Permit Fee: Business = 16,000 ft² \times \$106.56/ft² \times 1.03 \times 0.0075 = \$13,171

Important Points

- Tables 1 and 2 do not, in most cases, apply to additions, alterations or repairs to existing buildings. Because the scope of alterations or repairs to an existing building can vary so greatly, the Square Foot Construction Cost does not reflect accurate values for that purpose. However, the Square Foot Construction Cost can be used to determine the cost of an addition that is basically a stand-alone building which happens to be attached to an existing building. In the case of such additions, the only alterations to the existing building would involve the attachment of the addition to the existing building and the openings between the addition and the existing building.
- For purposes of establishing the Permit Fee Multiplier, the estimated total construction value for a given time period (1 year) is the sum of each building's value (gross area \times Square Foot Construction Cost \times Regional Cost Modifier) for that time period (e.g., 1 year).
- The Square Foot Construction Cost takes into account everything from site and foundation work to the roof structure and coverings, but does not include the price of the land on which the building is constructed. The price of the land does not affect the cost of related code-enforcement activities.

ICC PLAN REVIEW FEE SCHEDULE

The plan review fee is based on the estimated construction value calculated in accordance with the Square Foot Construction Costs in Table 1 (gross area \times Square Foot Construction Cost). The Regional Cost Modifiers in Table 2 are not used when computing the estimated construction value for the purpose of determining plan review fees. For buildings with an estimated construction value up to \$3,000,000, the building plan review fee is 0.0013 of the estimated value (\$250 minimum). For buildings with an estimated construction value over \$3,000,000 up to \$6,000,000, the fee is \$3,900 plus 0.0005 of the estimated value over \$3,000,000. For buildings over \$6,000,000, the fee is \$5,400 plus 0.0004 of the valuation over \$6,000,000.

BUILDING VALUATION DATA *(continued)*

Special consideration may be given in computing plan review fees for buildings such as large warehouses or indoor recreational facilities because of their plan review simplicity. Such considerations may also be given to buildings with repetitive floor plans such as high-rise buildings

Structural reviews in areas of high seismic or wind risk will have an additional surcharge. Please contact your local ICC district office for more details

The plan review fee for mechanical, plumbing and electrical reviews is computed at 25 percent of the building plan review fee for each discipline (\$250 minimum).

The plan review fee for accessibility and energy reviews is also computed at 25 percent of the building plan review fee for each discipline (\$250 minimum).

The sprinkler review fee is based on the number of sprinkler heads: 1-100, \$275; 101-200, \$325; 201-300, \$350; 301-400, \$375; 401-500, \$425; over 500, \$500 plus \$0.33 per sprinkler over 500. For hydraulically designed systems, multiply the fee by 2

Sample Plan Review Calculation

Type of Construction: IIB	Group: B
Height: 3 stories, 35 feet	Area/Floor: 15,000 sq. ft.
Solution:	
1 Gross square footage: 3 stories × 15,000 square feet	= 45,000 sq. ft.
2 Compute estimated construction value:	
Square Foot Construction Costs	= \$94.65/sq. ft.
Estimated Construction Value :	
45,000 sq. ft. × \$94.65/ft ²	= \$4,259,250
3 Compute Plan Review fee:	
Building: \$3,000,000 × 0.0013	= \$3,900
\$4,259,250 - \$3,000,000 = \$1,259,250	
\$1,259,250 × 0.0005	= \$630
Total Building Review Fee	= \$4,530
Mechanical, Plumbing, Electrical: (0.25)(\$4,530)	= \$1,132 each
Accessibility and Energy: (0.25)(\$4,530)	= \$1,132 each

Questions concerning the service should be directed to Christopher R. Reeves, P.E., Manager, Plan Review Services, (708) 799-2300 x309.

Table 1. Square Foot Construction Costs^{a, b, c}

Group	(2003 International Building Code)	Type of Construction								
		IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1	Assembly, theaters, with stage	160.69	153.29	149.76	143.55	133.59	132.90	138.98	123.75	119.25
	Assembly, theaters, without stage	148.41	141.02	137.48	131.28	121.31	120.63	126.71	111.47	106.98
A-2	Assembly, nightclubs	118.34	115.03	112.14	107.94	100.98	99.75	104.00	91.98	88.94
A-2	Assembly, restaurants, bars, banquet halls	117.34	114.03	110.14	106.94	98.98	98.75	103.00	89.98	87.94
A-3	Assembly, churches	149.66	142.27	138.73	132.52	122.51	121.82	127.96	112.67	108.17
A-3	Assembly, general, community halls, libraries, museums	119.71	111.78	107.24	102.03	91.08	91.39	97.46	81.24	77.74
A-4	Assembly, arenas	117.34	114.03	110.14	106.94	98.98	98.75	103.00	89.98	87.94
B	Business	119.85	115.54	111.79	106.56	95.15	94.65	102.31	84.79	81.61
E	Educational	128.37	124.05	120.50	115.17	106.24	103.73	111.36	94.92	91.38
F-1	Factory and industrial, moderate hazard	74.13	70.68	66.42	64.36	55.62	56.61	61.75	47.42	45.06
F-2	Factory and industrial, low hazard	73.13	69.68	66.42	63.36	55.62	55.61	60.75	47.42	44.06
H-1	High Hazard, explosives	69.75	66.29	63.04	59.97	52.43	52.42	57.36	44.23	N.P.
H234	High Hazard	69.75	66.29	63.04	59.97	52.43	52.42	57.36	44.23	40.88
H-5	HPM	119.85	115.54	111.79	106.56	95.15	94.65	102.31	84.79	81.61
I-1	Institutional, supervised environment	119.19	115.10	112.01	107.47	98.61	98.56	104.22	90.64	87.06
I-2	Institutional, incapacitated	200.36	196.04	192.30	187.07	175.32	N.P.	182.81	164.96	N.P.
I-3	Institutional, restrained	137.99	133.67	129.93	124.70	114.47	112.98	120.44	104.12	98.94
I-4	Institutional, day care facilities	119.19	115.10	112.01	107.47	98.61	98.56	104.22	90.64	87.06
M	Mercantile	88.15	84.83	80.95	77.74	70.26	70.02	73.81	61.26	59.22
R-1	Residential, hotels	120.33	116.24	113.15	108.61	99.80	99.75	105.41	91.83	88.25
R-2	Residential, multiple family	100.33	96.24	93.15	88.61	79.95	79.90	85.56	71.98	68.40
R-3	Residential, one- and two-family	96.19	93.52	91.22	88.71	84.51	84.30	87.22	80.46	74.68
R-4	Residential, care/assisted living facilities	119.19	115.10	112.01	107.47	98.61	98.56	104.22	90.64	87.06
S-1	Storage, moderate hazard	68.75	65.29	61.04	58.97	50.43	51.42	56.36	42.23	39.88
S-2	Storage, low hazard	67.75	64.29	61.04	57.97	50.43	50.42	55.36	42.23	38.88
U	Utility, miscellaneous	52.28	49.43	46.49	44.17	38.31	38.31	41.69	31.50	29.99

- a Private Garages use Utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c N.P. = not permitted

Table 2. Regional Cost Modifiers

State	Cost Modifier	State	Cost Modifier	State	Cost Modifier	State	Cost Modifier	State	Cost Modifier
Alabama	0.86	Hawaii	1.41	Massachusetts	1.11	New Mexico	0.90	South Dakota	0.94
Alaska	1.39	Idaho	0.97	Michigan	1.01	New York	1.03	Tennessee	0.88
Arizona	0.97	Illinois	1.05	Minnesota	1.06	North Carolina	0.87	Texas	0.85
Arkansas	0.84	Indiana	0.99	Mississippi	0.84	North Dakota	0.97	Utah	0.93
California	1.12	Iowa	1.01	Missouri	0.95	Ohio	0.99	Vermont	1.01
Colorado	0.99	Kansas	0.92	Montana	0.94	Oklahoma	0.86	Virginia	0.89
Connecticut	1.10	Kentucky	0.95	Nebraska	0.94	Oregon	1.06	Washington	1.09
Delaware	1.07	Louisiana	0.87	Nevada	1.05	Pennsylvania	1.01	West Virginia	1.02
Dist. of Columbia	1.06	Maine	0.98	New Hampshire	0.98	Rhode Island	1.10	Wisconsin	1.05
Florida	0.91	Maryland	0.97	New Jersey	1.13	South Carolina	0.85	Wyoming	0.96

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**Notes from October 28, 2009 Meeting with Planning and Development
Services Stakeholders
Revision November 9, 2009
Revision November 22, 2009 to add notes from three more meetings**

Steve and I decided to add all of the notes from the meetings held November 13, 19, and 20, so that all stakeholders have the information from all sessions. AW

The following notes summarize the information shared among all of the Stakeholders present at all four meetings. No particular statement is attributed to any stakeholder. There was general agreement among the stakeholders about many issues, but there was no intent to take votes or to achieve complete agreement on any issue. The information provided will be used for two main purposes:

1. To give the City an indication of the issues of concern to stakeholders
2. To obtain a better understanding so that the consultant report on construction-related processes, including the calculation of use taxes, can be as complete and accurate as possible.

The opinions voiced here have not been placed in any context of best practices, comparative practices, legal requirements, etc. This document is presented in its current form to ensure the stakeholders involved that their concerns were heard, understood, and will be considered in the consultants' report.

Please call Anita White at the number provided above, if you see any inaccuracies in the notes or if we have neglected to include any important ideas. You may note some redundancy, as everyone was concerned about many of the same issues. We tried to capture the concerns and because of different ways of expressing concerns, we may have written about each issue more than once.

On behalf of the City, Steve and I thank you for your patience and for sharing your ideas, concerns, and suggestions with us. We have appreciated your taking the time to meet and speak with us (and to write to us, as many have done). We have attempted to include all issues that have come to us—whether in stakeholder meetings, phone conversations, or emails-- in this final set of notes.

INTRODUCTORY ISSUES

1. In general, there was disappointment that the City Manager and the Project Liaison were not to remain to hear the concerns of the stakeholders at the first meeting. This issue, along with the early note that the consultants were interested in improving the current system, caused great consternation. As a result of this consternation, the City Manager asked that the consultants place no limits on the issues to be discussed, assuring the group that she wished to hear everything. However, at least one stakeholder stated that he thought it was appropriate for the City Manager and the Project Liaison to leave the meeting.
2. At the first stakeholder meeting, discussion took place regarding the use of information from the stakeholder discussion for legal actions. Everyone seemed to agree that these meetings were focused on eliciting opinions and were not intended to be a part of any legal proceeding.
3. **In general, everyone at all meetings felt that the most important issue to discuss was the retroactive payments and whether they were legal, appropriate, fair, and equitable.**

IMPACT OF 2003 PROCESS CHANGES

1. During the first meeting, significant time was spent on discussing the stakeholders' opinions that the 2003 changes to the building permit processes were intended to provide a method which would provide 100% cost recovery for City activities related to building permitting.
2. Stakeholders felt that the 2003 changes meant that the City developed a list of "here is what you owe" during the building permit process and that this was ALL that was owed.
3. Later meetings did not focus as much upon the 2003 changes.

APRIL 2009 AND AUGUST 2009 LETTERS AND WHY THEY SEEMED SO WRONG TO STAKEHOLDERS

1. Stakeholders were most concerned about the April 2009 and August 2009 letters. They said there had been no communications with any of them prior to the issuance of the letters, which seemed to conflict with the 2003 discussions and associated process changes.
2. Few of those attending any of the four meetings received the April letters, but most received the August 2009 letters. Some have said it felt as though the April letter was a trial balloon for what came in August.

3. Stakeholders who received the April letters have further clarified that they met with Public Works following the April letters and were told other builders/contractors would also receive letters. The stakeholders had expected that they would hear more from the City during May, but it was not until the August letters came out that they received additional information. In the meantime, they believe that some who received the April letters actually worked out payment plans. Thus, there might have been inconsistent treatment because others may not have paid or worked out any payment plans and their payments are on hold due to the City's 60 day moratorium.
4. Stakeholders seem to think someone in the City "screwed up" because no one had ever heard before that the process changes had not resulted in the 100% cost recoveries mentioned during meetings regarding the 2003 changes.
5. Stakeholders apparently assumed that—maybe based on "unwritten rules"—that no new taxes would be assessed once the Certificate of Occupancy (CO) was issued. This assumption was based upon language in the Code which stated that the final inspection, which results in the issuance of the CO, would not be scheduled until all fees and taxes had been paid.
6. Some questioned whether City Council knew anything about the August letters, before they were sent. Others seemed to blame City Council for allowing the letters to be issued.
7. **Overall, most stakeholders felt the approach was not consistent with past practice, that they had complied with what they understood the City policies and practices to be, and that they were now facing financial penalties for doing business just as they assumed it was supposed to be done.**
8. The reason that some felt their integrity was being questioned may have come from the fact that those few who received letters in April. When those who received letters spoke to their colleagues--most of whom had not received letters—there was a feeling that perhaps those who had gotten letters had somehow done something wrong. Once the August letters came out, everyone was concerned about the appearance of inappropriate payment of taxes. In addition, press coverage seemed to indicate that contractors had not paid the required taxes and that they were "delinquent" or "cheating."
9. One builder mentioned that in 18 years he had completed perhaps five reconciliations and that he had requested of those reconciliations. Two times the company received a refund and three times the builder paid additional taxes. There has never been any system for reconciling all construction projects for purposes of use tax.
10. Were only the largest projects singled out for the voluntary compliance? If so, is this fair?

11. Perception is that big developers cheated the system, but many homeowners and smaller builders got letters also.
12. Stakeholders are certain there was no form for reconciliations prior to August 20; therefore, if they were supposed to be doing reconciliations, how were they to be done?
13. We believe that, if we had had the chance to explain how things are done, that there would have been no taxes owed. Our subcontractors often pay the sales tax; the reconciliation form does not recognize these sales tax payments.
14. If 29th Street was used as the means for assessing underpayment, then there was a major error in assumptions. On that project, \$200,000 projects became \$2M projects.
15. Most participants said, "I have no problem paying what is truly owed, but I thought I had."

SPECIFIC PRACTICAL PROBLEMS IDENTIFIED

1. What will be done about those projects that do not require a building permit? Will someone come after the use tax issues since, if there is no permit, no use taxes have been collected?
2. Are there 700 more voluntary compliance letters being prepared to go out? How can nearly every project have underpaid use tax?
3. Would it simply be easier to just pay sales taxes on materials up-front?
4. Are current taxes appropriately paid on equipment used in construction projects?
5. There appear to be errors or inconsistencies in the training the City offers on the sales and use tax. According to attendees, the City staff could not answer some questions during the November training.
6. What bookkeeping requirements will be necessary to complete the reconciliation forms? How can we be expected to have known what these requirements would be three years ago?
7. The current reconciliation form does allow for reducing the taxes based upon the fact that subcontractors usually purchase materials and often pay sales tax at the time of purchase.
8. City needs to remember the use taxes are usually paid by others because contractors are not buying most of the construction materials.
9. There is significant disagreement about the assumption that 50% of a project is materials. For a top-end residential finish, that is possible; however, in most cases labor is higher than materials. Some have done a study and found that for most of their residential projects the materials are really only about 25%-30%.
10. Some feel that the reconciliation form, because it is in error, cannot be used and that there should be audits of each project. Because of the

- 25% issue identified in #9 above, incorrect handling of the County use tax, etc., most feel that the City will owe them money, if projects are audited. If jobs are audited, stakeholders feel that audit should be completed within 6 months of project completion, not after 3 years.
11. Most say that their projects in other jurisdictions have never been handled in this way, requiring a payback three years later.
 12. Several stakeholders mentioned that projects that were completed five years ago were included in the August letters, showing new dates within the three year period.
 13. Many felt that tenant finishes are being overcharged for use taxes.
 14. There might be significant double dipping, if subcontractors are paying the sales tax at the point of purchase and then contractors are paying use tax on the same construction materials.
 15. Many stakeholders have been told by permit technicians that they over-valued projects and the permit technicians have been reducing the valuations. This may result in the underpayment of the use tax.
 16. Most stakeholders are not familiar with the tax on rented equipment.
 17. Some stakeholders have mentioned that they will check with City's P&DS staff to see whether anything is owed, only to be told that there are no other charges. Many of those projects were included in the August voluntary compliance letters.
 18. Some stakeholders felt that the incorrect use tax rate was referenced in the letters, with projects that should have been under a previous lower rate were mentioned to be paying at the higher rate approved after the project was completed.
 19. Most stakeholders have contracts, which state that the client is responsible for all taxes and fees; however, the City wants the contractor to be the tax collector. The only way for a contractor to collect taxes from a closed project might be to sue the client for taxes.
 20. There appears to be little information about audits, no way to ask for an audit. How will the City collect if there is an audit, from whom? Will liens be required?
 21. One contractor mentioned being audited in 2003-2004; he said the time spent on the audit was largely his going back and trying to get information from subcontractors who do not keep adequate records.
 22. Most said they could live with the 50% if there were no reconciliation/retroactive audit process.
 23. The City must decide what to do when someone pays under protest. There have been situations where such a payment has been recorded as a lien. Also, the City will need to decide what to do about refunds, if there are to be any.
 24. One stakeholder has put together a 45-page summary, from the Code; some of the statements on the websites are contradictory.
 25. Building Division says this is not their problem (assume reference is to the use tax).

26. Other jurisdictions do not charge use tax to exempt (non-profits, etc); however, Boulder wants to continue to make contractors responsible. This allows Boulder to achieve tax on materials because the exempt agencies are not responsible.
27. Since builders/contractors may not be applying for permits, seems inappropriate to assess them for the taxes. Owners and/or architects may be the ones pulling permits and some of them have also received the voluntary compliance letters—even though the contractors are supposed to consider the final user of materials.
28. Contractors do not markup the fees and taxes. Thus, if there are changes mid-stream, they cannot find a way to increase these charges to their clients.
29. The three year rule is not in the tax collection section. Audits should be used for information only, to determine whether the valuation process is adequate and to make appropriate adjustments in the valuation formula.
30. There have been problems with the valuation—a \$4.5M job that the City valued at \$3.5M. Or, another project was valued at 2.5X the value and now I am owed a refund.
31. The contractor who begins a job may not be the one who completes the job—who should pay?
32. Were the 29th Street audits the paradigm for these assessments? They are not a good model for other projects.
33. City should specify what needs to be included as taxable under the use tax.
34. The City should only require a reconciliation on change orders, since we paid taxes in the beginning on the original project.
35. Perhaps taxes collected up front should be placed in escrow until the project is finished.
36. The City should issue a temporary CO and not make that final until projects are completed (or 6 months after, to allow all bills to come in).
37. How are County taxes handled—there seemed to be some inconsistency among the letters received.
38. How should the City communicate with builders/contractors—why did they not notify us of potential use tax problems when we renewed our licenses?
39. Contract prices include overhead and profits—do I have to pay use tax on these? The reconciliation form seems to be in error here.
40. Some have gone to Building Division to see what was owed at end of project...they paid. Now, Finance has come back in and greatly increased the assessment of what was owed.
41. We should have had these meetings before the August letters went out.
42. To audit, they will need real numbers and they do not have them. It could cost me up to \$10,000 per project to get the numbers for an audit.
43. There is confusion about the Boulder business license and whether they need one. Isn't the state license adequate?
44. We need to explain how this differs from an IRS audit.

45. Some have tried to pay additional taxes on the front-end, to avoid having to settle up at the end, but the Permit Tech said that was not possible.

THIS ISSUE IS A SIGN OF SOMETHING MORE IMPORTANT, ACCORDING TO THE STAKEHOLDERS

1. Some stakeholders felt that the real issue is the overall relationship with the City and its staff. Some mentioned poor communications and even called the City's "one stop shop" philosophy for construction-related regulation and support more of a "Stop Shop."
2. Some questioned why there had been such extensive outreach on fees as a part of the 2003 process review and NO discussion of the use taxes and the audit of these taxes.
3. Stakeholders expressed concern that new "victims" are being created; This is the result as general contractors have had to inform their clients about potential new costs, as summarized in the April/August voluntary compliance letters.
4. There were concerns about how things would be handled if some of the parties had gone out of business or died during this time.
5. Several asked whether title companies and mortgage lenders understood that additional costs might be owed after the certificate of occupancy was granted.
6. Several also mentioned that homeowners might have significant additional costs after mortgages had already been determined.
7. There was discussion that real estate attorneys had always "understood," based on past performance, that numbers were final at the point of issuance of the Certificate of Occupancy, which was called a "powerful moment" in the process.
8. Some wondered how grant-funded projects (HUD projects) might be expected to pay costs three years down the road.
9. Much of the discussion surrounded the public's perceptions of this issue, including the harm done to the image and reputations of builders and contractors. Since many of the stakeholders have been doing business in Boulder for years, they felt outraged that they somehow seemed in the wrong, even though they were doing business just as it had been done for years.
10. Some stakeholders mentioned that they had already arranged payment plans and wondered whether it was fair that the sixty-day moratorium allowed others to delay such arrangements. And, they wondered whether, if the ultimate decision were to not try for the three year recovery, would they still be required to go forward with payment plans.
11. There was concern about whether the City Manager and City Council fully understood the pain that resulted from the issuance of the voluntary compliance letters.

12. The builders felt that they had discussed the fee increases with Public Works, but there was NO discussion of the use taxes increasing so much.
13. How will the City deal with liens? How will we deal with liens? Would the City place liens on everyone for the retroactive taxes?
14. There were questions about how the current system is being implemented, since there appear to be so many potential retroactive recoveries.
15. Some stakeholders voiced concern that, by taking part in these stakeholder meetings, they were risking retaliation from the City (they were not specific regarding any particular organization which might be involved).
16. There was a feeling among stakeholders that building permits are now just a way to collect the use tax, that the original purpose of ensuring safety for the citizens had become lost in the concerns about collecting money.
17. There is a feeling that, "If the economy were good, you wouldn't be doing this to us."
18. There is significant confusion about the fact that the City staff told them the amount of tax that should be paid and then, after receiving final inspection and CO, they were told that there was a problem with the original tax assessment—whose fault is that?
19. The City needs to look at the incredible number of requirements and restrictions they have placed on us. Some believe their overhead for dealing with the City's processes, including the current issue, are well in excess of 15% of their project costs. The feeling is that they are paying taxes on the taxes, because of the time and effort it takes to work with the City.
20. There were concerns that only approximately 300 of the potential 1000 stakeholders received letters inviting them to these meetings. There was a feeling the City believes that publishing meeting notices on their website represents true communications, but it does not.
21. Some stakeholders doing large projects felt that it would be simpler and cleaner for them to simply pay the sales tax on all materials as purchases; however, it is clear that many materials are being purchased in other jurisdictions, via the internet, etc.
22. The retroactive payment may force people out of business, since many are already losing money this year. Why not work on the ordinances and processes and make changes going forward, which are communicated to the staff and to us.
23. Many felt the valuation tables are really flawed.
24. All documents refer to contractors owing back taxes, but our contracts say the client pays taxes.
25. Even a homeowner and retired businessman who attended meetings out of civic duty—wanted to know what was happening—changed his mind after hearing the issues. He, too, felt the City had made some mistakes.
26. This is the first time most builders have talked to each other.

27. Some dislike the term “stakeholder”—we are more than that.
28. Suppliers were driven out of town; will we be next?

FUTURE CHANGES

1. At first, stakeholders generally expressed little interest in the future process issues, as they were so concerned about the potential retroactive payments. They did state that, whatever the finally approved process, they would abide by those processes.
2. In spite of the early focus on the retroactive payment issues, the stakeholders made several useful recommendations regarding the future process changes including:
 - Make sure that there are formal notices of any changes in process, forms, or documents.
 - Ensure that staff are trained in new processes and that all forms and documents are changed to comply with new processes.
 - Prefer a system without any reconciliation, where fees and taxes are collected upfront and that is final.
3. Again, questioned whether the valuation/square footage approach is correct, particularly considering that fact that homes are not now worth what they might have been worth when permits were pulled.
4. There were questions about whether the permitting process might be simplified and whether so many people should need to review each building permit.
5. The tax code has some language which was never in the building code; that is partly what led to the different interpretations of the approved process.
6. Stakeholders recommend that we review Westminster, Broomfield (painless audit), and Larimer County for good processes.
7. Stakeholders would like to see some improvement in what they call a “culture of arrogance and intimidation.”
8. City Manager and City Council should meet with the stakeholders and stop wasting money on consultants.
9. Fix the huge disconnect between Building Division and Finance.
10. In the future, we want to truly work in partnership with the City.
11. What stakeholders really want:
 - No retroactive payments
 - An apology from the City, stating that they “screwed up”
 - Consideration of the possible liabilities associated with pursuing the retroactive payments (legal liabilities, political problems, liens on property)
 - Simple, less costly process—maybe pay us to collect the use tax.
 - Ensure we understand the accounting requirements on the front end
 - Ensure that City staff are trained and understand the processes.
 - Prefer a system without reconciliation and few audits

PHILOSOPHICAL ISSUES

- 1. *Even if it turns out that retroactive payment of construction use taxes is legal, is it fair and defensible?***
- 2. *What will enforcing the retroactive payments do to the relationships with the builders and other payers of the tax, particularly if legal actions ensue? Is the City willing to live with the flurry of liens and other legal actions that are likely to result?***

APPENDIX C

Aurora, Colorado Construction Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

When Collected?

A deposit is remitted upon building permit issuance.

How Calculated?

The use tax rate is applied to 50% of the total cost of the building.

2. Is Reconciliation Required?

There is no mention of reconciliation. A person who has paid the deposit may apply for a refund within one year.

3. Are Use Taxes Audited?

If the payer believes he/she has overpaid, he must present evidence within one year following the issuance of a certificate of occupancy or final inspection.

4. Is the General Contractor Responsible for Paying the Use Tax

“Any person who builds, constructs or improves any building, dwelling or other structure or improvement” must make a deposit at building permit time.

Denver, Colorado Construction Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

When Collected?

Use taxes are paid when sales taxes are not paid at point of sale; paying sales tax seems to be the preferred method.

How Calculated?

Like sales tax.

2. Is Reconciliation Required?

Not if sales taxes are paid at point of sale. Could not find any references to reconciliations in tax rules published on-line; however, there must be some way to identify when sales taxes were not the method of payment.

3. Are Use Taxes Audited?

Because the preferred method is to have contractors pay the sales tax on materials at point of sale, all contractors purchasing materials in Denver pay the sales tax. Thus, the sales tax collectors are audited. Attorneys in stakeholder meetings referred to "Denver auditing everything."

4. Is the General Contractor Responsible for Paying the Use Tax

Contractors are considered the users of materials used in construction and they are assumed to pay sales taxes on materials purchased in Denver.

Englewood, Colorado Construction Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

When Collected?

A deposit is remitted upon building permit issuance.

How Calculated?

The use tax rate is applied to 50% of the total cost of the building.

2. Is Reconciliation Required?

No

3. Are Use Taxes Audited?

Yes, if requested by a taxpayer.

4. Is the General Contractor Responsible for Paying the Use Tax

“Any person who does not maintain a permanent place of business within the boundaries of the City and who shall build, construct or improve any building, dwelling or other structure or improvement” pays at permit time.

El Paso County, Colorado Construction Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

When Collected?

El Paso County, which is a participant in a Regional Building Department, offers three methods for collecting the construction use tax:

- A formula is used to value materials
- Keep all receipts and use tax will be collected prior to final building inspection
- Buy materials and pay sales taxes and no use tax will be due

How Calculated?

If the use tax is paid at the time of permit, it is calculated based on 40% applied to the total cost of the completed project

2. Is Reconciliation Required?

It would appear that a reconciliation process would be used (keep all receipts), but we could not find details of that process

3. Are Use Taxes Audited?

Unknown; since the process in use is fairly new, maybe audits have not yet been considered

4. Is the General Contractor Responsible for Paying the Use Tax

Depends upon the payment option selected.

Good ideas to consider: Involved the housing and building association in developing the revised practices that went into effect in 2009.

Golden Construction Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

When Collected?

Upon issuance of a building permit.

How Calculated?

The permit applicant is responsible for calculating the total valuation of the project and material costs are estimated to be 50% of the project costs. The Building Official/Plans Examiner must verify and “set” the valuation.

2. Is Reconciliation Required?

Yes. A reconciliation must be completed within 6 months of issuance of the certificate of occupancy.

3. Are Use Taxes Audited?

The City’s Building Use Tax Handout states that the City has the right to audit a construction project within 3 years of the date of the certificate of occupancy or final inspection.

4. Is the General Contractor Responsible for Paying the Use Tax

The City’s Building Use Tax Handout refers to contractors and property owners.

Lakewood, Colorado Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

When Collected?

Use Tax may be paid at the time of permit (as an estimate and/or deposit) or may be paid based on actual construction material usage each month. If using the monthly payment approach, must file a sales/use tax return, with a summary of all invoices and statements for purchases on or before 10th of each succeeding month. If monthly payment is used, a use tax license must be obtained.

How Calculated?

If the use tax is paid at the time of permit, it is calculated based on 50% of general contract estimated cost and/or estimated mechanical contract costs.

2. Is Reconciliation Required?

Yes. Upon completion of a project, a certificate of occupancy (CO) is issued and contractor will receive a reminder from the City to reconcile to the use tax deposit paid.

3. Are Use Taxes Audited?

Use taxes may be audited up to three years from the date of the CO, or a contractor may request an audit upon project completion.

4. Is the General Contractor Responsible for Paying the Use Tax

Yes, the general contractor usually pays the use tax deposit at permit issuance; however, the property owner is ultimately responsible for use tax liability.

Good ideas to consider: Consider use tax paid at permit time is an estimate and/or a deposit. Language clarifies role of general contractor in collecting use tax.

Westminster, Colorado Construction Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

There are two methods for reporting and paying the tax: the estimated pre-payment method and the actual cost method. Estimated pre-payment method is the most frequently used method and the City's Tax Compliance Guide emphasizes that the pre-payment is "strictly an estimate."

When Collected?

The estimated pre-payment method is collected when the permit is issued.

How Calculated?

50% of estimated valuation.

2. Is Reconciliation Required?

Yes, the contractor must reconcile the actual use tax liability with the estimated pre-payment at the conclusion of the project.

3. Are Use Taxes Audited?

Yes, according to the City's Tax Compliance Guide, "the Sales Tax Division conducts routine audits of construction projects to determine compliance with the Westminster Municipal Code. The purpose of the audit is to determine whether the correct amount of tax has been reported and paid by the taxpayer."

4. Is the General Contractor Responsible for Paying the Use Tax?

Yes, the General Contractor is responsible for paying the tax.

Good ideas to consider: Three levels of residential projects—custom expected to have higher construction costs.

Wheat Ridge, Colorado Use Tax Practices

1. General Description of Process for Calculating and Collecting Use Tax

When Collected?

Use tax is paid in advance on materials and construction supply items, based on values identified during the permitting process.

How Calculated?

The advance payment is calculated at 60% of the project value.

2. Is Reconciliation Required?

No, but the contractor may request an audit, if he or she thinks the tax was overpaid.

3. Are Use Taxes Audited?

Use taxes may be audited up to three years from the date of the CO, or a contractor may request an audit upon project completion.

4. Is the General Contractor Responsible for Paying the Use Tax

Yes

Good ideas to consider: Many training materials on use tax (including on construction equipment)

Appendix D

Best Financial Practices—Auditing Revenue Sources

Anita White and Steve Fisher, the Consultants who prepared this report, have provided training to many organizations throughout the country on revenue management and revenue alternatives. One of the major recommendations provided during these training sessions has been to learn as much as possible about each revenue source; this learning process includes auditing each revenue source. The organizations to whom the Consultants have provided this training include:

- The National League of Cities (two half-day seminars)
- The Arizona Government Finance Officers Association (half-day seminar)
- The Louisiana Government Finance Officers Association
- The Michigan Municipal League
- The Utah Government Finance Officers Association
- The Washington Government Finance Officers Association (one-day seminar)

Some of the Consultant's slides for training provided to the Washington Government Finance Officers Association are included to illustrate how the auditing of revenue sources is handled.

In addition, the Consultants have enclosed a list of ideas for Fiscal First Aid from the Government Finance Officers Association of the US and Canada. The first issue identified is the need to audit revenue sources.

Best Practices—Involve Stakeholders When Implementing Major Changes

In the publication, The Customer-Driven Company, Richard Whitley¹ has identified a set of appropriate customer service practices which could be considered best practices. The most important of these practices is actively seeking feedback. This practice seems consistent with the City's usual inclusive approach to changes in practices, policies, and processes.

In addition, the Consultants, in their training related to revenue reviews, strongly suggest including stakeholders in assessing each revenue source. The Government Finance Officers Association and other such sources, support the use of stakeholder groups in addressing most budgetary planning.

¹ Richard Whitley, The Customer Driven Company, Addison-Wesley, Reading, MA, 1991, 1997.

CITY OF BOULDER, COLORADO

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CITY ATTORNEY SUMMARY OPINION

TO: Jane Brautigum, City Manager
FROM: Jerry P. Gordon, City Attorney *JPG*
SUBJECT: Construction Use Tax Legal Issues
DATE: December 7, 2009

INTRODUCTION

The city is reviewing its possible future actions with regard to certain uncollected construction use taxes. The matter has generated community concern and its resolution implicates both legal and policy matters.

In order to provide a legal analysis of this matter, the services of an outside legal consultant were obtained by the city attorney. Also, pertinent legal issues were independently reviewed by members of the City Attorney's Office.

The basic legal conclusion flowing from this review process is that the city would almost certainly face litigation if it decides to pursue collection of certain unpaid construction use tax revenues. The legal challenge would be a serious one and its outcome cannot be predicted with any significant level of confidence.

Finally, it appears that additional clarity should be brought to the city code and implementing procedures. For those and other reasons, the city may decide to direct its efforts in that direction rather than toward attempting to collect some potentially past due construction use taxes.

DISCUSSION

The current situation was triggered by city auditor discoveries that a number of construction projects may owe construction use taxes beyond the taxes that were already paid based upon estimates. Letters were sent to a number of potentially impacted parties suggesting that a reconciliation process was appropriate and laying the foundation for possible future audits. Members of the local construction community and other directly affected members of the community reacted strongly. The city manager is now faced with making a decision about

Re: Construction Use Tax Legal Issues

whether the city should utilize its relatively limited auditing resources to attempt to collect the additional construction use taxes.

The city has the right to collect construction use tax, to verify valuation data regarding the cost of building materials, and to engage in audits as provided by the city's code. However, legal issues will not be the only issues of concern in the city manager's decision about how to proceed. Social and logistical issues will also be relevant. For example, the city's auditing resources are limited and there has been a high level of community concern generated as a result of this matter. Those factors will presumably be considered by the city manager (among others) as she decides how to proceed. The legal part of this decision should be influenced by the fact that there are significant legal hurdles that would have to be overcome by the city if it decides to proceed with audits and collections in this area.

Under these circumstances, it may be prudent to direct the city's limited auditing resources to areas other than those involving the disputed additional construction use taxes. That approach would, among other benefits, allow time for any ambiguities in the city's code and implementing procedures to be resolved. If this is the approach chosen, the city manager may also wish to consider some limited rebates to those who tendered additional tax money based upon the recent letters. In other words, the city manager may want to consider actions that she believes to be appropriate to help achieve equity among similarly situated tax payers.

I want to emphasize that the city has reasonable legal arguments justifying collection of previously incurred but unpaid construction use taxes. However, it is also true that the city manager may decide to hold the city to a higher standard of transparency than is strictly required by the law. This is particularly true if she feels that the city's past communications in this area have not been up to the standards of transparency and clarity to which this organization has traditionally aspired.

Finally, the city attorney strongly suggests that elements of the city's tax regulations and related collection procedures should be reviewed. The City Attorney's Office would, of course, be available to provide advice with regard to procedures that might be utilized during a period of review.

ATTACHMENT C

BOULDER REVISED CODE
CHAPTER 3-2: Sales and Use Tax

(d) If the telephone service user owns the property upon which the telephone is located, the city manager may use the procedures specified in section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981, to collect any uncollected charge. The manager may use any other proper means to collect such charges when not collected by the service supplier.

Ordinance Nos. 5062 (1987); 5430 (1991); 7313 (2003)

3-1-5. Use of Electronic Databases.

(a) Any retailer who collects and remits sales tax to the sales tax division of the City of Boulder, as provided in this article, may use an electronic database of state addresses that is certified by the Colorado Department of Revenue pursuant to § 39-26-105.3 C.R.S., to determine the jurisdictions to which tax is owed.

(b) Any retailer who uses the data contained in an electronic database certified by the Colorado Department of Revenue pursuant to § 39-26-105.3 C.R.S. to determine the jurisdictions to which tax is owed, shall be held harmless for any tax, penalty or interest owed to the City that otherwise would be due solely as a result of an error in the electronic database, provided, however, that the retailer can demonstrate the use of the most current information available in such electronic database on the date the sale occurred. Each retailer shall keep and preserve such records as prescribed by the city manager to demonstrate that it used the most current information available in the electronic database on the date the sale occurred. Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive representation, a false representation or fraud, the provisions of this section shall not apply.

Ordinance No. 7531 (2007)

Chapter 2 Sales and Use Tax¹

3-2-1. Legislative Intent.

(a) It is the intent of the city council in enacting this chapter that every person in the city who purchases at retail, leases, consumes, stores or puts to any use any tangible personal property or taxable services is exercising a taxable privilege. All sales, leases and purchases of tangible personal property and taxable services defined in this chapter are taxable unless specifically exempted in this chapter.² The sales tax imposed on tangible personal property by this chapter applies to each transfer of ownership, possession and control of such property and may occur more than once during the life of the property.³

(b) The sales tax is a transaction tax levied upon all sales, purchases and leases of tangible personal property and taxable services sold or leased by persons engaged in business in the city and is collected by the vendor or lessor and remitted to the city.⁴ The use tax is levied upon the privilege of persons in the city to use, store or consume tangible personal property located in the city and taxable services purchased or leased at retail and furnished within the city, whether purchased or leased inside or outside the city limits, and not subject to the sales tax imposed by this chapter. The use tax is remitted to the city by the person using, storing or consuming the tangible personal property or taxable services. The use tax is a complement to the sales tax, and its purposes are to equalize competition between in-city and out-of-city vendors and lessors of tangible personal property and services and to eliminate incentives for city residents to leave the city to purchase or lease tangible personal property and taxable services.

3-2-2. Imposition of Tax.

(a) On and after 11:59 p.m., December 31, 1967, there is hereby levied and there shall be collected and paid a sales or use tax on the full purchase price paid or charged for tangible personal property and taxable services purchased or

¹ Adopted by Ordinance No. 4575, Amended by Ordinance No. 4593; Derived from Ordinance Nos. 2803, 2955, 2974, 3110, 3133, 3278, 3288, 3330, 3501, 3662, 3881, 4335, 4388, 4396, 4406, 4448.

² *Security Life & Acc. Co. v. Temple*, 492 P.2d 63 (1972).

³ *Bedford v. Hartman Bros.*, 104 Colo. 190 89 P.2d 584 (1939).

⁴ See *J.A. Tobin Construction Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

sold at retail by every person exercising a taxable privilege in the city by the sale or use of such property and services. The sales tax is levied on all sales of tangible personal property or taxable services, except those specifically exempted and is collected by the vendor and remitted to the city. The use tax is levied upon the privilege of using in the city, personally or as part of rendering a service, tangible personal property or taxable services upon which a municipal sales or use tax has not been paid and is paid by either the vendor doing business in the city or the consumer. The following paragraphs prescribe rules for various taxable transactions:

- (1) If tangible personal property is purchased for use exclusively in the rental or leasing business and is not at any time used for the purchaser's general business or personal use, use tax is not due upon the purchase of the tangible personal property, but a sales tax is due upon the rental or leasing of tangible personal property used in the rental or leasing business, regardless of whether a sales or use tax has been paid upon a previous purchase of the property.
- (2) A resident of the city shall pay sales tax upon the purchase price paid or charged for automotive vehicles purchased for use or storage in the city. A resident of the city shall pay use tax under this chapter upon the purchase price paid or charged for automotive vehicles purchased outside of the city for use or storage within the city. No person may register an automotive vehicle for which registration is required until such person has paid all sales or use taxes due on the purchase of the vehicle. No resident shall register a vehicle at an address other than such resident's principal residence or place of business within the city for the purpose of evading the sales or use tax imposed by this chapter.
- (3) A use tax is not due upon a registered vehicle used in the city by a business if the vehicle is registered to a bona fide business address outside the city.
- (4) Motor vehicles used by automobile dealers for demonstrations are exempt from use tax if each such vehicle is available for and in fact used by licensed sales personnel of the dealership for the promotion of business of selling vehicles. Vehicles used in the dealer's service or repair business are subject to a use tax. Demonstrator vehicles are subject to a sales tax when they are sold, regardless of whether a use tax has been paid for their use. Use tax is based upon the dealer's net invoice price of the vehicle. To be entitled to claim an exemption for demonstration vehicles, a taxpayer shall file with the sales tax return a certification of the use of all demonstration vehicles used in the business.¹
- (5) A use tax is due upon tangible personal property that is utilized in the city if such use occurs within three years of the most recent sale of the property. No use tax shall be due on the use of tangible personal property within the city that occurs more than three years after the most recent sale of the property if, within three years following the date of such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.
- (6) The purchaser of tangible personal property acquired with the purchase of a business for use in the operation of such business shall pay a sales tax upon the purchase price of such property recorded in the bill or contract of sale, but in no event shall the tax be based upon a valuation of property less than its fair market value. If the purchase price of the property is not itemized in the bill or contract of sale, the tax shall be based upon the book value that the purchaser uses for income tax depreciation or upon the fair market value of the property if no book value has been established. Regardless of the method used to value the property, no deduction shall be made on account of any outstanding liabilities acquired by the purchaser of the business and property.
 - (A) Purchasers of a business are liable to pay all unpaid sales or use taxes of the seller of the business, if the purchasers have acquired the furniture, fixtures and equipment of the business and engage in a similar business.
 - (B) Consumers from the business to be purchased who have accounts upon which sales or use tax is outstanding at the time of purchase of a business shall pay that tax at or before the time of sale.

¹ See Colorado Department of Revenue Sales and Use Tax – Special Regulations, 1 CCR 201-5, "Automotive Dealers and Demonstration Vehicles."

- (7) Whenever tangible personal property, including property sold in conjunction with the sale of a business, is sold under a conditional sales contract, lease-purchase contract or capital lease contract, whereby the vendor or lessor retains title as security for all or part of the purchase price or whenever the vendor retains a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the sales tax is immediately due and payable upon the total selling price. There is no refund or credit for either party to the transaction if the property is repossessed by the vendor.
- (8) A sales tax is due upon the purchase price paid for the transmission of intrastate electronic messages as defined in section 3-1-1, "Definitions," B.R.C. 1981.
- (9) Construction equipment that is located within the city for a period of more than thirty consecutive calendar days shall be subjected to the full applicable use tax of the city.
- (10) Construction equipment that is located within the city for a period of thirty consecutive days or less shall be subjected to the city's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by the tax rate set forth in section 3-2-5, "Rate of Tax," B.R.C. 1981.
- (11) Where the provisions of paragraph (a)(10) of this section are utilized, the credit provisions of subsection 3-2-9(b), B.R.C. 1981, shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other municipalities organized and existing under the authority of the Constitution or laws of the State of Colorado on any such equipment is equal to the tax that would otherwise be paid to the city on the full purchase price of the equipment by applying the tax rate set forth in section 3-2-5, "Rate of Tax," B.R.C. 1981.
- (12) In order to invoke the provisions of paragraph (a)(10) of this section, the taxpayer shall comply with the following procedure:
 - (A) Prior to or on the date on which the construction equipment is located within the boundaries of the city, the taxpayer shall file with the city manager an equipment declaration on a form provided by the city. Such declaration shall state the dates on which the taxpayer anticipates the construction equipment will be located within and removed from the boundaries of the city, shall include a description of each such piece of equipment, shall state the actual or anticipated purchase price of each such piece of equipment, shall state the actual amount of sales or use taxes paid to other municipalities and shall include such other information as reasonably deemed necessary by the city.
 - (B) The taxpayer shall file with the city an amended construction equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the city or, for equipment that is brought into the city for a project of less than ninety days' duration, no later than ten days after substantial completion of the project.
 - (C) The taxpayer need not report on any equipment declaration any construction equipment for which the purchase price was under \$2,500.00.
- (13) If the equipment declaration is given as provided in paragraph (a)(12) of this section, then as to any item of construction equipment for which the purchase price was under \$2,500.00 that was brought into the boundaries of the city for thirty days or less for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as the rate set forth in section 3-2-5, "Rate of Tax," B.R.C. 1981, and that such local sales or use tax was previously paid. In such case the burden of proof shall be on the city to prove such local sales or use tax was not paid.
- (14) If the taxpayer fails to comply substantially with the provisions of paragraph (a)(12) of this section, the taxpayer may not invoke the provisions of paragraph (a)(10) of this section and all construction equipment shall be subject to the provisions of paragraph (a)(9) of this section.

(b) Vendors engaged in business in the city shall collect and purchasers shall pay the taxes levied by this chapter, notwithstanding the fact that either vendor or purchaser disputes the tax liability or claims an exemption. If the vendor or purchaser disputes the application of this chapter to any transaction, the vendor shall collect and the purchaser shall pay the tax, and the purchaser may thereafter apply to the city manager for a refund of such taxes paid, as provided in section 3-2-23, "Refunds (Applies to Entire Title)," B.R.C. 1981.

(c) Any purchaser or consumer accused of failing to pay a tax due under this chapter shall be found not guilty of that offense if it is demonstrated by a preponderance of the evidence that such purchaser or consumer paid the tax to a vendor who such purchaser or consumer reasonably believed would remit the tax to the city.

(d) Vendors shall remit to the city taxes collected according to their net taxable sales, whether or not each sales transaction consists of some items each of which has a retail sale price of less than the minimum taxable sale; but vendors may exclude from net taxable sales the amount of each individual sales transaction that is less than the minimum taxable sale.

(e) Every vendor required or permitted to collect the tax imposed by this chapter shall collect it upon the purchase price of tangible personal property purchased or leased outside the city and intended to be brought into the city for use, storage or consumption, notwithstanding the following circumstances:

- (1) That the purchaser's order or the contract of sale is delivered, mailed or otherwise transmitted by the purchaser to the vendor at a point outside of the city as a result of solicitation by the vendor through the medium of a catalogue or other written advertisement, by radio or television advertising or by any other means;
- (2) That the purchaser's order or contract of sale was made or closed by acceptance or approval outside of the city or before the tangible personal property enters the city;
- (3) That the purchaser's order or contract of sale provides that the property shall be, or it is in fact, procured or manufactured at a point outside the city and shipped directly to the purchaser from a point of origin; or
- (4) That the property is mailed to the purchaser in the city from a point outside the city or delivered to a carrier at a point outside the city, F.O.B., or otherwise, and directed to the purchaser in the city, regardless of whether the cost of transportation is paid by the vendor or by the purchaser.

Ordinance Nos. 4873 (1984); 4962 (1986); 5187 (1989)

3-2-3. Taxes Collected Are Held in Trust.

All sums of money paid by a purchaser to a vendor or retailer as required by this chapter are public monies that are the property of the city. The vendor or retailer shall hold such monies in trust for the sole use and benefit of the city until the vendor or retailer pays them to the city manager.¹

3-2-4. Vendor Liable for Tax.

(a) Except as otherwise provided by section 3-2-14, "Methods of Paying Sales and Use Tax," B.R.C. 1981, every vendor shall pay the tax rate set forth in section 3-2-5, "Rate of Tax," B.R.C. 1981, on all taxable sales. On or before the twentieth day of each month, each vendor shall file a return to the city manager for the preceding calendar month and remit an amount equal to the percentage specified in section 3-2-5, "Rate of Tax," B.R.C. 1981, of such sales and any excess tax collected over the specified percentage of such sales to the city manager.²

(b) The vendor shall add the tax as a separate and distinct item in the sale, except that any retailer selling malt, vinous or spirituous liquors by the drink may include in the sales price the tax imposed by this chapter. The tax shall be a debt from the purchaser to the vendor recoverable at law in the same manner as other debts. The vendor may not absorb

¹ *B.K. Sweeny Elec. Co. v. Poston*, 110 Colo. 139, 132 P.2d 443 (1943).

² § 39-26-105, C.R.S.

the tax or advertise or state that the tax will be absorbed or will not be imposed. Nor may the vendor refund any part of the tax, except when the full sales price is refunded or a discount is made as provided in section 3-2-10, "Deductions," B.R.C. 1981.

Ordinance Nos. 4879 (1985); 5015 (1986); 5599 (1993)

3-2-5. Rate of Tax.

(a) Except as specified in subsection (b) of this section, the amount of the tax hereby levied is 3.41¹ percent of the purchase price of tangible personal property or taxable services sold or purchased at retail.

(b) The amount of the tax hereby levied on food sold in or by a food service establishment shall be the amount levied in subsection (a) of this section plus 0.15 percent of the purchase price of such food. Cover charges, admission or entrance fees and mandatory service or service-related charges shall be included as part of the purchase price of such food. However, a mandatory service or service-related charge shall not be included as part of the purchase price of such food, if the full amount of the charge is passed on to the employees of the food service establishment who have provided direct service to each person paying the charge, and if all federal and state income and other applicable taxes due on such charge have been withheld by the food service establishment and paid to the appropriate government.

(c) Of said amount, 0.25 percent shall be deemed a parks and recreation tax, which tax shall expire at 12:00 midnight on December 31, 2015; 0.33 percent shall be deemed an open space tax, which tax shall expire at 12:00 midnight on December 31, 2018; 0.15 percent shall be deemed a general sales and use tax, which tax shall expire at 12:00 midnight on December 31, 2012; 0.15 percent shall be deemed an open space tax, which tax shall expire at 12:00 midnight on December 31, 2019; and, beginning on January 1, 2005, 0.15 percent shall be deemed a general sales and use tax, which tax shall expire at 12:00 midnight on December 31, 2024. As each tax expires, the aggregate tax shall be reduced accordingly.

Ordinance Nos. 5015 (1986); 5047 (1987); 5222 (1989); 5492 (1992); 5780 (1996); 5794 (1996); 5882 (1997); 5958 (1997); 7248 (2002); 7323 (2003); 7505 (2006); 7607 (2008); 7653 (2009)

3-2-6. Exempt Property and Services.

Purchase, sale or use of the following property and services is exempt from taxation under this chapter:

(a) Services, not otherwise taxable under this chapter, whose price is separately stated from the price of tangible personal property with which the services are sold;

(b) Services, not otherwise taxable under this chapter, whose price is not separately stated from the price of tangible personal property with which the services are sold, but that is calculated as a percentage of the total sales price of the property, and approved as exempt by the city manager upon written request;

(c) Tangible personal property sold at wholesale that is actually transformed by the process of manufacture and becomes through the manufacturing process a necessary and recognizable ingredient and component of the finished product, and whose presence in the finished product is essential to the use thereof in the hands of the ultimate consumer;

(d) Exempt commercial packing materials;²

(e) Any wheeled vehicle exceeding either eight feet in width or thirty-two feet in length excluding towing gear and bumpers, without power to move, that is designed and commonly used for residential human occupancy in either temporary or permanent locations and that may be drawn over the public highways by a motor vehicle, after such vehicle has once been subject to the payment of sales or use tax under this chapter;

(f) Wholesale sales of taxable property to a licensed retailer, jobber, dealer or other wholesaler for purposes of taxable resale, and not for the retailer's, jobber's, dealer's or wholesaler's own consumption, use, storage or distribution;

¹ The rate of tax was decreased from 3.56 percent to 3.41 percent effective January 1, 2008, in accordance with subsection (c).

² *Bedford v. C.F. & L, Inc.*, 102 Colo. 538, 81 P.2d 752 (1938), *Western Electric Co. v. Weed*, 185 Colo. 340, 524 P.2d 1369 (1974). See also Colorado Department of Revenue Sales and Use Tax, ICCR 201-4, Regulation 26-102.20.

(g) Tangible personal property that is to be used, stored or consumed outside the State of Colorado by persons residing or doing business outside the State of Colorado when the property is to be delivered to the purchaser outside the state by mail; by common, contract or commercial carrier that is employed to effect delivery by the vendor; or by the vendor's conveyance;

(h) Gasoline or motor fuel upon which has accrued or has been paid the tax prescribed by the Colorado Gasoline and Special Fuel Tax Law;¹

(i) Cigarettes;

(j) Medical supplies;

(k) Public accommodations, as defined in section 3-1-1, "Definitions," B.R.C. 1981;

(l) Admission to places or events as defined in section 3-1-1, "Definitions," B.R.C. 1981;

(m) Neat cattle; sheep, lambs, swine and goats; and mares and stallions for breeding;

(n) Newspapers and newsprint and printer's ink used to produce newspapers, but not preprinted newspaper supplements;

(o) Sales of tangible personal property and taxable services that are to be used, stored or consumed outside the city to persons who are not residents of the city and who do not engage in business in the city if the property or services purchased or sold are to be delivered to the purchaser outside the city by mail; by common, contract or commercial carrier that is employed by the vendor to effect delivery; or by the vendor's conveyance;

(p) Motion picture prints when the exhibitor thereof charges admissions for exhibition and pays the admission tax imposed by chapter 3-4, "Admissions Tax," B.R.C. 1981;

(q) Tangible personal property owned by a resident but purchased when the purchaser was not a resident of the city and used for a substantial period of time outside of the city. When such property is an automotive vehicle, it may qualify as exempt property only if it was registered outside the city for a substantial period of time;

(r) Amounts paid by any purchaser as, or in the nature of, interest or finance charges on account of credit extended in connection with the sale or purchase of any tangible personal property if the interest is separately stated from the consideration received for the property;

(s) Tangible personal property brought into the city by a non-resident for temporary personal use;

(t) Automobile dealers' demonstration vehicles, subject to the conditions in paragraph 3-2-2(a)(4), B.R.C. 1981;

(u) All property and services whose sale, purchase or use the city is prohibited from taxation by the laws or Constitution of the United States or the Constitution of the State of Colorado;

(v) All sales of food purchased with food stamps on or after November 1, 1987;

(w) Building materials for installation, use or consumption on buildings which have been designated as landmarks and for which a landmark alteration certificate is required under chapter 10-13, "Historic Preservation," B.R.C. 1981, if, at the time of application for building permit, the applicant submits proof that the building has been so designated and accompanying affidavits of the owner and the contractor performing the construction on the building stating that the building materials will be installed, used or consumed exclusively upon the building for which the permit has been issued

¹ § 39-27-111, C.R.S.

and that at least thirty percent of the dollar value of the building permit shall be for exterior improvements. No person shall fail to comply with such an affidavit. No more than \$25,000.00 of tax per year and no more than \$12,500.00 of tax per site per year shall be exempted under this subsection; or

- (x) "Occasional food sale," as defined in section 3-1-1, "Definitions," B.R.C. 1981.

Ordinance Nos. 4879 (1985); 5030 (1987); 5092 (1988); 5272 (1990); 5315 (1990); 5430 (1991)

3-2-7. Exempt Persons.

The following persons are exempt from payment of the tax imposed by this chapter on all purchases unless otherwise specified but not the duty to collect and remit the tax levied hereby on sales:

(a) The United States government and all departments and institutions thereof, the State of Colorado and the departments, institutions and political subdivisions thereof, and the city, but only in the exercise of their governmental functions and only when purchases are supported by official government purchase orders and paid for by draft or warrant drawn on the government's account directly to the seller. But purchases or sales of tangible personal property or taxable services for the use in construction projects, as defined in section 3-1-1, "Definitions," B.R.C. 1981, provided under a construction contract to the government entity by an independent contractor are taxable.¹

(b) Charitable organizations, if:

- (1) The purchase is of property or services to be used in the conduct of the organization's regular activities to foster its religious or charitable purpose;²
- (2) The purchase is paid for directly by the organization without reimbursement therefor, and the purchase generates for the organization no "unrelated business taxable income" as defined in section 512 of the United States Internal Revenue Code;
- (3) The organization obtains from the city manager an exempt institution license under section 3-2-12, "Exempt Institution License," B.R.C. 1981, and presents the license to the vendor at the time of the purchase or sale; and
- (4) The property or service purchased or sold is not for use in construction projects, as defined in section 3-1-1, "Definitions," B.R.C. 1981, when provided under construction contract to the charitable organization by an independent contractor.

(c) Building contractors purchasing construction materials to be used for installation, use or consumption on job sites or building construction addresses on which a city building permit has been issued, if:

- (1) The value of the construction materials was included in determining the valuation of the construction for purposes of obtaining the building permit;
- (2) The vendor records on the invoice of sale the job site address and building permit number; and
- (3) The contractor has prepaid the tax directly to the city on the estimated or actual basis, calculated as a percentage of the construction valuation at the time the building permit is issued.

(d) Nonresidents of the city who bring tangible personal property into the city for personal use, storage or consumption while they are temporarily within the city.

Ordinance Nos. 5430 (1991); 6090 (1999); 7162 (2001)

¹ Temple v. Arthur Veneri Co., 470 P.2d 576 (1970).

² Security Life & Acc. Co. v. Heckers, 495 P.2d 225 (1972).

3-2-8. Exemption Burden of Proof.

The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying the tax upon any property or services sold or purchased, paying tax to the city manager, or making returns to the city manager is on the person asserting the claim of exemption.¹

3-2-9. Tax Limited When Other Taxes Paid.

The tax imposed under this chapter shall be reduced by the amounts of taxes paid to the city, other cities or other states as follows:

(a) When a sales tax has been paid to the city under this chapter, no use tax is due upon the use, storage or consumption of tangible personal property, but a sales or use tax is due upon the rental or leasing of such property.

(b) The city's use tax shall not apply to tangible personal property that was previously subjected to a sales or use tax of another municipality, organized and existing under the authority of the Constitution or laws of the State of Colorado, lawfully imposed on the purchaser or user, equal to or in excess of the rate set forth in section 3-2-5, "Rate of Tax," B.R.C. 1981. A credit shall be granted against the city's use tax equal to the tax paid by reason of the imposition of a sales or use tax of the other municipality on the purchase or use of the property. The amount of the credit shall not exceed the rate set forth in section 3-2-5, "Rate of Tax," B.R.C. 1981. The use tax credit set forth in this subsection shall not apply to a sales tax paid on construction materials.

(c) The city's sales tax shall not apply to the sale of construction materials, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit evidencing that a local use tax has been paid or is required to be paid.

(d) The city's use tax shall not apply to construction materials that are stored inside the city but are not used for any other purpose within the city.

Ordinance Nos. 4873 (1984); 4962 (1986); 5001 (1986); 7011 (1999)

3-2-10. Deductions.

The following amounts may be deducted from a taxpayer's gross sales:

(a) Exempt property and services set forth in section 3-2-6, "Exempt Property and Services," B.R.C. 1981;

(b) Gross sales that are represented by accounts not secured by a conditional sale contract or chattel mortgage, found to be worthless and actually and properly charged as bad debts for Colorado State income tax purposes; except that if any such accounts are thereafter collected by the taxpayer, the taxpayer shall pay the tax upon the amount so collected and the three year limitation of section 3-2-38, "Limitations," B.R.C. 1981, applies from the date on which the tax was payable without consideration for the write-off rather than from the date when the vendor actually writes off the debt;

(c) The sales price of property returned by the purchaser when the full sale price including the tax levied is refunded in cash or by credit;

(d) The amount of discount from the original sales price if the discount and corresponding decrease in sales tax due is actually passed on to the purchaser; but any allowed rebate, credit or cash discount allowed for payment on or before a given date may only be deducted on the taxpayer's return that follows the customer's actual receipt of the discount. If the price upon which the tax was computed and paid to the city by the vendor is subsequently readjusted before the purchaser pays the vendor the tax, the taxpayer may request the city manager to approve a credit of such additional tax paid against the tax due on the next return the taxpayer files with the city;

¹ First Lutheran Mission of the Kiwoks v. Department of Revenue, 613 P.2d 351 (Colo. App. 1980).

(e) The amount of the fair market value of any exchanged or traded property that is to be resold thereafter in the usual course of the retailer's business, if included in the full price of an article sold; and

(f) The amount of each individual sales transaction that is less than the minimum taxable sale.

Ordinance No. 7248 (2002)

3-2-11. Sales and Use Tax License.

(a) No person shall engage in the business of selling at retail tangible personal property or taxable services without first having obtained a sales and use tax license from the city manager.

(b) Each license shall be numbered, show the name, residence, place and character of business of the licensee, and be conspicuously posted in the place of business for which it is issued. No sales and use tax license is transferable.

(c) No person engaged in business in the city who regularly purchases or leases tangible personal property or taxable services for use, storage or consumption in connection with said business, from sources within or without the city, shall use, store or consume such property or services without first having obtained a sales and use tax license.

(d) The city manager shall issue a sales and use tax license to persons who pay the license fee prescribed by section 4-20-38, "Tax License Fees," B.R.C. 1981, and complete an application therefor, stating the name and address of the person and the business and such other information as the city manager may require. The manager shall not issue a sales and use tax license until the manager has verified that the location of the business complies with the provisions of title 9, "Land Use Code," B.R.C. 1981.

(e) The license is valid so long as the business remains in continuous operation or the license is canceled by the licensee or revoked by the city.

(f) If business is transacted at two or more separate locations by one person, each location shall be separately licensed.

(g) Whenever a business entity that is required to be licensed under this chapter is sold, purchased or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new license for the business.

Ordinance Nos. 4803 (1984); 5599 (1993); 7162 (2001)

3-2-12. Exempt Institution License.

(a) No exempt institution shall purchase tax free in the city or use in the city tangible personal property or taxable services without payment of the tax imposed by this title unless the institution first obtains an exempt institution license from the city manager and presents its license or, if a government entity, its license number, to the vendor of tangible personal property or taxable services before making a purchase, lease or use of the property or services.

(b) The application for an exempt institution license shall include the organization's certificate of incorporation and a copy of the institution's federal tax exemption letter, bylaws and financial statements showing source of funds and expenditures.

(c) As a condition of obtaining an exempt institution license, the institution shall agree to make regular and complete reports of all purchases, both those that are not taxable and those that are taxable, including, without limitation, purchases of property and services resold to members and others and those used for other than the exempt purpose of the institution.

3-2-13. Revocation of License.

After notice and an opportunity for a hearing under chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, the city manager may revoke the license of any person whom the manager finds to have violated any provision of this title.

3-2-14. Methods of Paying Sales and Use Tax.

(a) Every contractor who builds, reconstructs, alters or improves any building or other structure, including work performed for federal, state or city governments or exempt institutions in the city, and every person engaged in the installation of poles, lines, cables or other transmission or distribution facilities of public utilities, and who purchases tangible personal property or taxable services for use therein and every owner or lessee of realty or improvements to realty in the city who attaches tangible personal property to or causes to be performed taxable services upon said realty or improvements thereto shall pay the tax imposed by this chapter upon such tangible personal property or taxable services in one of the following ways:

- (1) Payment to a vendor licensed by the city of tangible personal property or taxable services at the time and place of purchase thereof;
- (2) Payment by either the owner, lessee, or general contractor or separately by a subcontractor electing to do so at the time a building or right-of-way permit is issued, on the estimated percentage basis, based on a percentage of the total valuation of the construction contract; or
- (3) Filing a use tax return on a monthly or other basis approved by the city manager under subsection 3-2-15(d), B.R.C. 1981, and payment of the tax by the twentieth day of each reporting period for the previous reporting period after obtaining a sales and use tax license.

(b) Every person who engages in business in the city and who purchases, leases or rents tangible personal property or taxable services for use, storage or consumption in the city in connection with the business from sources within or without the city and taxable under this chapter and who has not paid the sales tax imposed by this chapter to a vendor required to collect the tax shall pay the city use tax, after obtaining a sales and use tax license, by filing a return on a monthly or other basis approved by the city manager under subsection 3-2-15(d), B.R.C. 1981, and remitting the tax by the twentieth day of each reporting period for the previous reporting period.

(c) Every resident of the city who purchases or leases any taxable property or taxable services for use, storage or consumption in the city from sources within or without the city and who has not paid a sales tax under this chapter to a vendor required to collect it shall file a use tax return and pay the tax within thirty days from the purchase or lease of the taxable property or taxable services.

(d) Nonresident vendors engaged in business in the city shall collect and remit the sales and use taxes as prescribed in this chapter, but the nonresident vendor may petition the city manager to allow filing returns and paying taxes on a regularly audited and reasonable estimated payment basis on the grounds that the payment of the tax on individual sales will impose an undue hardship and that the type, occasion and infrequency of sales warrants such exception. Estimated payments of the tax shall be based upon the proportion that the vendor's gross sales taxable under this chapter bear to the vendor's total gross sales.

Ordinance No. 4873 (1984)

3-2-15. Tax Returns.

(a) The city shall use and the taxpayer shall file its return upon the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the executive director of the State Department of Revenue by the first full month commencing one hundred twenty days after the effective date of the regulation adopting or revising such standard form.

(b) A vendor doing business in two or more locations, whether inside or outside the city, may file one return covering all such locations, but the vendor shall file a supplemental report showing gross sales and net taxable sales and taxes collected thereon for each such location.

(c) Taxpayers are required to file returns and pay sales and use taxes due according to the following schedule:

Average Sales and Use Tax Liability per Month	Remittance Schedule
Up to \$15.00	Annually
\$15.01 to \$300.00	Quarterly
Over \$300.00	Monthly

(d) Upon request of a taxpayer whose regularly employed accounting methods are such that monthly returns may result in undue hardship, the city manager may accept returns at more convenient intervals or in installments that will nevertheless not jeopardize collection of the tax.

(e) The city manager may require a bond or other financial guarantee to secure payment of the tax on less frequent than monthly basis, as authorized in subsection (d) of this section, and may revoke permission to pay the tax on such basis if the tax due becomes delinquent.

Ordinance Nos. 4962 (1986); 7248 (2002)

3-2-16. City Council Empowered to Amend, Repeal and/or Revise Law.

The city council is authorized to reduce the retail sales and use tax imposed by this chapter and amend or repeal this chapter.

3-2-17. Duties and Powers of City Manager.

(a) The city manager is authorized to administer the provisions of this title, issue licenses, adopt legislative and interpretive rules to implement this title, prescribe forms and provide a uniform method of adding the tax or its average equivalent to the purchase price, and permit taxpayers to pay tax on an estimated percentage basis or at less than monthly intervals.

(b) The city manager may, upon the request of a taxpayer or potential taxpayer, issue a written opinion on the applicability of this title and any provisions thereof to such taxpayer. The request shall be written and under oath shall include all information required by the manager. The manager's opinion shall be limited to the statement of facts as submitted and applicable ordinances in effect on the date of the opinion.

(c) The city manager may appoint such auditors, accountants, experts and other persons as are necessary to carry out the manager's responsibilities under this title. The manager may delegate to such persons authority granted to the manager as necessary for administration of this title and shall bond any person handling money under this title.

(d) The city manager shall waive sales and use taxes otherwise payable under this chapter on construction projects for the rehabilitation of housing for low income persons whose income does not exceed thirty-five percent of the median income for Boulder County.

(e) The city manager or an agent thereof may compromise any civil or criminal dispute under this title to the extent of \$500.00 before referring it to the office of the city attorney for prosecution. The city attorney or a delegate thereof shall compromise any criminal or civil case arising under this title, upon the manager's written request. Whenever a compromise of \$500.00 or less is made by the manager or an agent thereof, the manager shall file a written opinion explaining the reasons therefor, which may include financial inability of the taxpayer to pay a larger amount, and a statement of:

- (1) The amount of tax assessed;
- (2) The amount of interest, penalties and additional amounts imposed by this chapter on the taxpayer; and
- (3) The amount paid under the terms of the compromise.

(f) The city manager shall make available to any requesting vendor a map showing the boundaries of the city. The requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it.

(g) The city manager may grant rebates of sales and use taxes paid by primary employers in connection with equipment acquisition, construction projects, construction equipment and construction materials when, in the judgment of the city manager, the rebate will serve the economic interests of the city by helping attract or retain a primary employer which contributes to a socially, environmentally and economically sustainable community. The city manager may promulgate interpretive guidelines to define more specifically the circumstances under which rebates may be granted and to establish application procedures, review criteria, schedules or other matters necessary or desirable for implementation of this subsection or the purposes and findings in Ordinance No. 7639. Any taxes rebated pursuant to this subsection shall be deemed payable by the city's general fund. This subsection shall not be used in connection with a taxpayer protest or as an offset to an audit assessment.

(h) The city manager shall rebate to the taxpayer the portion of sales and use taxes paid under this chapter for Photovoltaic and Solar Thermal Systems specified in this subsection. A portion of the sales and use taxes paid under this chapter for Photovoltaic and Solar Thermal Systems may be set aside by city council budget actions to create a reserve account dedicated to providing access to Photovoltaic and Solar Thermal Systems on housing for low or moderate income persons and on the facilities of site-based nonprofit entities operating in Boulder. The taxpayer rebate shall be the amount remaining after the reserve account set aside is deducted. This program shall be reviewed periodically for effectiveness, and shall not be deemed a change in taxing policy.

Ordinance Nos. 4962 (1986); 7478 (2006); 7487 (2006); 7554 (2007); 7639 (2009)

3-2-18. Taxpayer Duty to Keep Records and Make Reports.

(a) The city manager may require any person, by regulation or notice served on such person to make such return, render such statement, keep and furnish such records or make such information reports as the manager may deem sufficient to demonstrate whether or not such person is liable for payment or collection of tax imposed by this title.

(b) Contractors who have prepaid an estimate of taxes on construction projects under paragraph 3-2-14(a)(2), B.R.C. 1981, shall, upon completion of each such project, report the actual costs of tangible personal property and taxable services used therein.

(c) Every taxpayer or other person liable to the city for sales or use tax under this title shall keep and preserve for a period of three years such books, accounts and records, including, without limitation, original sales and purchase records, as may be necessary to determine the amount of tax that the taxpayer is liable to pay or collect.¹

(d) All such books, accounts and records shall be open for examination at any time by the city manager or a duly authorized agent thereof. If the taxpayer or person does not keep the necessary books, accounts and records within the city, such taxpayer or person may comply with this subsection by producing books, accounts, records or such information as the manager reasonably requires for examination within the city or at the place where such books, accounts, records or information are regularly kept.

(e) If a taxpayer refuses to furnish any of the foregoing books, accounts, records or information upon request of the city manager or an agent thereof, the manager may apply to any judge of the District Court of the State of Colorado for a subpoena to require the taxpayer to appear before the manager, produce any of the foregoing information in the taxpayer's possession, and testify under oath before the manager.

(f) If the city manager is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the taxpayer's taxable sales, the manager may apply to any judge of the District Court in

¹ See Colorado Department of Revenue Sales Tax and Use Tax, ICCR 201-4, Regulation 26-116.

and for Boulder County for subpoenas to such other persons as the manager believes may have knowledge of the taxpayer's return or income. If the manager shows that the taxpayer cannot be found, evades service of subpoena, fails or refuses to produce records or give testimony, the judge may cause subpoenas to issue to the persons sought, requiring them to appear before the manager and give testimony regarding the taxpayer's return or income. If any of the persons so served with subpoenas fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

3-2-19. Coordinated Audit.

(a) Any taxpayer licensed in the city pursuant to section 3-2-11, "Sales and Use Tax License," B.R.C. 1981, and holding a similar sales tax license in at least four other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided in this section.

(b) Within fourteen 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 city manager, 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 city's right to recover tax owed by the vendor for the audit period.

(c) Except as provided in subsection (g) of this section, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of any passage-of-time based limitation upon the city's right to recover taxes owed for the proposed audit period may be audited by the city during the twelve months after such request is submitted only through a coordinated audit involving all of the listed Colorado municipalities electing to participate in such an audit.

(d) If the city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection (b) of this section, the city manager will so notify the city manager or other appropriate official of the municipality whose notice of audit prompted the taxpayer's request within ten days after receipt of the taxpayer's request for a coordinated audit. The city manager will then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during 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.

(e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the city manager will facilitate arrangements between the city and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The city manager will cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors 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.

(f) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the city manager will, once arrangements for the coordinated audit between the city and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited, the records most likely to be required by participating municipalities for completion of the coordinated audit, and the proposed schedule for the coordinated audit.

(g) 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 this section;
- (3) When a taxpayer refuses to promptly sign a waiver of any ordinance that could limit, based upon passage of time, the city's right to recover for a portion of the audit period; or

- (4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subsection (b) of this section.

Ordinance No. 5430 (1991)

3-2-20. Preservation of Tax Returns and Reports.

(a) All reports and returns required under this title and received by the city shall be preserved for three years and thereafter until the city manager orders them to be destroyed.

(b) Except in accordance with judicial order or as otherwise provided by law, the city manager and agents, clerks and employees thereof shall not divulge or make known in any way any information disclosed in any document, report or return filed under this title except such information as is displayed on the tax license. The officials charged with the custody of documents, reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the manager in an action or proceeding under the provisions of this title when the report of a fact shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.¹

(c) Nothing in this section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof of a copy of any return or report filed in connection with such person's tax. Copies of such records may be certified by the city manager or an agent thereof and when so certified shall be evidence equally with the originals and may be received as evidence of their contents.

(d) Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the city attorney or other legal representatives of the city.

(e) Notwithstanding the provisions of this section, the city manager may furnish to the taxing officials of the State of Colorado, its political subdivisions, any other state or political subdivision or the United States, any information contained in tax returns and related documents filed pursuant to this title or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the manager to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax purposes.

(f) Notwithstanding the provisions of this section, the city manager may disclose:

- (1) Names, addresses and telephone numbers of the officers and owners of a sales, use, accommodations admissions or admissions tax licensee as that information has been provided to the city by the licensee;
- (2) Information to an individual with whom, or an organization with which, the manager has contracted to assist the city in examining or auditing tax records or collecting taxes, provided that the individual or organization is required by contract not to disclose any of that information to any person other than the city manager and the authorized agents, clerks and employees thereof; and
- (3) Information to an individual with whom, or an organization with which, the manager has contracted to assist the city in evaluating economic trends or revenue projections within the city, provided that the individual or organization is required by contract not to disclose any of that information to any person other than the city manager and the authorized agents, clerks and employees thereof.

(g) If a city employee or officer violates the provisions of this section, such employee or officer may be dismissed from office and may also be prosecuted for a violation of this section.

¹ See *Losavio v. Robb*, 579 P.2d 1152 (1978).

(h) No individual with whom, or organization with which, the manager has contracted pursuant to this section shall fail to comply with the confidentiality provisions of this section. Any such failure may be prosecuted for a violation of this section, and may constitute a basis upon which to terminate the individual's or organization's contract with the city.

Ordinance Nos. 5882 (1997); 7330 (2003)

3-2-21. Restrictions on Employment by City Employees.

No deputy, agent, clerk or other officer or employee of the city engaged in any activity governed by this title shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person holding a sales and use tax license from the city for the purpose, directly or indirectly, of preparing tax returns or reports required by the city, the State of Colorado, its political subdivisions, any other state or the United States or accept any employment for the purpose of advising, preparing materials or data or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the city, the State of Colorado, its political subdivisions, any other state, its political subdivisions or the United States.

3-2-22. Penalties for Failure to File Tax Return or Pay Tax (Applies to Entire Title).

(a) If any person fails, neglects or refuses to collect tax or to file a return and pay the tax required by this title or fails to remit the correct amount of tax; or underpays the tax on a regular basis; or underpays the tax because of negligence or fraud, the city manager shall make an estimate of the tax due, based on available information, and shall add thereto penalties, interest and any additions to the tax. The manager shall serve upon the delinquent taxpayer personally or by first class mail directed to the last address of the taxpayer on file with the city, written notice of such estimated taxes, penalties and interest, constituting a Notice of Final Determination, Assessment and Demand for Payment due and payable within twenty calendar days after the date of the notice. The taxpayer may request a hearing on the assessment as provided in section 3-2-25, "Hearings (Applies to Entire Title)," B.R.C. 1981.

(b) The penalties assessed for failure to file returns or pay taxes as required by this title shall be:

- (1) If a person neglects or fails to file a return or pay the tax on any return required under this title on the date prescribed therefor, determined including any extension of time for filing, such taxpayer is liable to pay a penalty of ten percent plus interest on such delinquent taxes at the rate imposed by subsection (j) of this section, plus one-half of one percent per month from the date when the return or payment was due until paid. In the case of nonfiling or nonpayment of the sales tax, the one-half percent per month penalty shall not exceed eighteen percent in the aggregate. The city manager shall assess the penalties by serving upon the taxpayer a Notice of Final Determination, Assessment and Demand for Payment, as provided in subsection (a) of this section.
- (2) In addition to any other penalties provided by this section, interest at twice the rate provided in subsection (j) of this section, shall be imposed on any use tax, finally determined to be due and unpaid under any provision of section 3-2-25, "Hearings (Applies to Entire Title)," B.R.C. 1981, from the date due until paid.

(c) If a taxpayer fails to file a return or pay the tax on any return required under this title on the date prescribed therefor, determined with regard to any extension of time for filing, due to fraud with the intent to evade the tax, is liable to pay a penalty of one hundred percent of the deficiency plus interest collected at a rate of three percent per month on the amount of the deficiency from the date the return was due until paid. The city manager shall assess the penalties by serving upon the taxpayer a Notice of Final Determination, Assessment and Demand for Payment, as provided in subsection (a) of this section.

(d) If the amount of tax is understated on the taxpayer's return because of a mathematical error on the face of the return, the city manager shall notify the taxpayer by Notice of Final Determination, Assessment and Demand for Payment of the amount of tax liability exceeding that shown in the return. The taxpayer has no right of appeal from this assessment but shall pay the tax due and assessed or file an amended return to show the correct amount of tax due within ten days from the date of the notice.

(e) If any amount of tax is not paid on or before the twentieth day following the end of the prescribed reporting period, interest on such amount at the rate imposed under subsection (j) of this section shall be paid for the period from such date until paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment.

(f) If any person liable to pay tax imposed by this title has repeatedly failed, neglected or refused to pay the tax within the time specified for such payment and the city manager has been required to exercise enforcement proceedings through issuing a distraint warrant to enforce collection of taxes due, the manager may add to the amount of taxes due, together with all penalties and interest thereon otherwise provided in this title, the following penalties for recurring distraint warrants:

- (1) For the second through fifth distraint warrants issued, the greater of fifteen percent of the delinquent taxes, interest and penalties due or the sum of \$25.00; and
- (2) For six or more distraint warrants issued, the greater of thirty percent of the delinquent taxes, interest and penalties due or the sum of \$50.00.¹
- (g) For good cause shown the city manager may waive any penalty assessed or interest imposed under this title.

(h) Interest prescribed under this title shall be paid upon notice and demand, shall be assessed, collected and paid in the same manner as the tax to which it applies, and may be assessed and collected at any time during the period within which the tax to which the interest relates may be assessed and collected.

(i) If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this title on the portion of the tax so satisfied for any period during which, if the credit had been allowed, interest would have been allowed to the taxpayer upon the overpayment.

(j) When interest is required or permitted to be charged under any provisions of subsections (b) through (e) of this section, the rate of interest shall be one percent a month.

(k) The penalties provided in this section are not exclusive.

Ordinance Nos. 4962 (1986); 5039 (1987); 5430 (1991); 7011 (1999); 7162 (2001); 7248 (2002)

3-2-23. Refunds (Applies to Entire Title).

(a) The right of any person to a refund under this title is not assignable. An application for refund shall be completed by the purchaser or vendor who paid the tax, as shown on the invoice of sale.

(b) If a dispute arises between the purchaser and vendor as to whether or not a sale or purchase is exempt from taxation under this title, the vendor shall collect and the purchaser shall pay the tax and the vendor shall issue to the purchaser a sales receipt or paid invoice.

(c) Limitations on refund claims shall be as follows:

- (1) An application for refund of sales or use tax paid under protest by a taxpayer which claims an exemption pursuant to section 3-2-6, "Exempt Property and Services," or 3-2-7, "Exempt Persons," B.R.C. 1981, shall be made within sixty days after the purchase, storage, use or consumption of the tangible personal property or taxable services whereon an exemption is claimed.
- (2) An application for refund of tax monies paid in error or by mistake shall be made within three years after the date of purchase, storage, use or consumption of the tangible personal property for which the refund is claimed. For bad debt write-offs, the three-year limitation of section 3-2-38, "Limitations," B.R.C. 1981, applies from the date on which the tax was payable without consideration for the write-off rather than from the date when the vendor actually writes off the debt.

¹ § 39-21-114(7), C.R.S.

- (3) Applications for refunds shall be made upon forms prescribed and furnished by the city manager, and the taxpayer shall support the claim for refund by the original paid invoice or sales receipt issued by the vendor and by the taxpayer's own affidavit establishing grounds for the exception and provide such other information as the manager may require.
- (d) The city manager shall with due speed determine whether to grant the refund and shall notify the applicant in writing of that determination. Aggrieved applicants may appeal the initial decision by requesting a hearing from the manager thereon within twenty calendar days of the date of the decision, as provided in section 3-2-25, "Hearings (Applies to Entire Title)," B.R.C. 1981, and may appeal an adverse decision of the manager, as provided in section 3-2-26, "Appeals From City Manager's Decision (Applies to Entire Title)," B.R.C. 1981.
- (e) If the city manager discovers from examining a return within the time periods provided for filing refund requests, upon a claim duly filed by the taxpayer, or upon final judgment of a court that tax, penalty or interest paid by any taxpayer under this chapter exceeds the amount due or has been illegally or erroneously collected, the manager shall refund such improperly collected tax, penalty or interest, regardless of whether the tax was paid under protest, together with interest provided in section 3-2-24, "No Interest On Overpayments and Refunds (Applies to Entire Title)," B.R.C. 1981. The manager shall issue a warrant for the payment to the taxpayer out of the reserve of the city general fund provided therefor. The manager shall keep on file a duplicate of such voucher and also a statement that sets forth the reasons that the refund was made.
- (f) Whenever it is established that any taxpayer has, for any period under applicable statutes of limitations, overpaid a tax imposed by this title and that the taxpayer also has an unpaid balance of tax and interest accrued on the city manager's records for any other period, the manager shall credit the portion of the overpayment of tax plus interest allowable thereon that does not exceed the amount of such unpaid balance and shall refund the remainder.
- (g) No applicant for a refund or other person supporting an application for refund shall make any false statement in connection with such application. The conviction of any person for violating this section is prima facie evidence that all refunds received by such person during the current calendar year were unlawfully obtained. The city manager may bring an action to recover such refunds. All refund application forms shall contain a summary of the penalty provisions provided in this subsection.

Ordinance Nos. 4812 (1984); 4962 (1986); 5430 (1991); 7248 (2002)

3-2-24. No Interest on Overpayments and Refunds (Applies to Entire Title).

- (a) No interest shall be allowed and paid upon any overpayment under this title.
- (b) Any portion of a tax or any interest, penalty, additional assessment or addition to the tax that has been erroneously refunded shall bear interest at the rate stated in subsection 3-2-22(j), B.R.C. 1981, from the date of the payment of the refund to the date of its repayment by the taxpayer.

Ordinance Nos. 4812 (1984); 5430 (1991); 7011 (1999)

3-2-25. Hearings (Applies to Entire Title).

- (a) A taxpayer may request a hearing on any proposed tax imposed under this title after receiving a Notice of Final Determination, Assessment and Demand for Payment or denial of a claim for refund by filing a request for hearing within twenty calendar days of the date of mailing of the notice of final determination or refund denial. The city manager may allow a later filing of a hearing request if the taxpayer shows good cause for a late filing. The request for hearing shall set forth the reasons for and amount of changes in the notice of final determination or refund denial that the taxpayer seeks and such other information as the manager may prescribe.
- (b) The city manager shall conduct the hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall notify the taxpayer in writing of the time and place of the hearing at least seven calendar days before it is scheduled, unless the taxpayer agrees to a shorter time. The hearing shall be held within sixty days of the date of receipt of the request for a hearing, unless the taxpayer agrees to a later date.

(c) The city manager shall conduct the hearing and may administer oaths and take testimony. The hearing officer on the appeal shall not be the same individual who determined the tax liability.

(d) In lieu of a request for hearing as provided in subsection (a) of this section, a taxpayer may request an extension of up to twenty calendar days for seeking a hearing by filing a written request within twenty calendar days after the date of mailing of the notice of final determination or refund denial or may file a written brief and such other documents and information as the taxpayer wishes within twenty calendar days after the date of mailing of the notice of final determination or refund denial and request the city manager to reconsider the action without a hearing. If the taxpayer requests a reconsideration of the manager's decision, the manager shall consider the request and render a decision, after which the taxpayer may request a hearing thereon as provided in subsection (a) of this section.

(e) The city manager may modify or abate in full the tax, penalty and interest protested by the taxpayer or grant the requested refund, based on the evidence and argument presented.

(f) The city manager shall send a Determination Notice to the taxpayer setting forth a decision, including any amount found due or amount of claim for refund denied and the grounds for allowing or rejecting the claim in whole or in part. The determination notice is an assessment that is due and payable within thirty days from its date, unless the taxpayer appeals the city manager's decision as provided in section 3-2-26, "Appeals From City Manager's Decision (Applies to Entire Title)," B.R.C. 1981.

(g) If after twenty calendar days from the date of the mailing of the notice of final determination or refund denial, the tax has not been paid, no request for hearing has been made, no extension has been requested, and no request for reconsideration has been filed by the taxpayer, the Notice of Final Determination, Assessment and Demand for Payment previously mailed constitutes a final assessment of the amount of tax specified, together with interest and penalties or a final denial of refund, except as to any amounts about which the taxpayer has filed a protest with the city manager.

Ordinance Nos. 4962 (1986); 5001 (1986); 5430 (1991); 5985 (1998)

3-2-26. Appeals From City Manager's Decision (Applies to Entire Title).

(a) An aggrieved taxpayer may appeal the city manager's Determination Notice to:

- (1) The District Court in and for Boulder County by filing a complaint for judicial review with the court within thirty days of the date of the Determination Notice, under Colorado Rule of Civil Procedure 106(a)(4); or,
- (2) For sales and use tax, the taxpayer may elect instead to appeal to the executive director of the Colorado Department of Revenue as provided in § 29-2-106.1, C.R.S., if all the transactions that are the subject matter of the city manager's Determination Notice occurred after January 1, 1986.

(b) Within fifteen days after filing the notice of appeal in cases proceeding under paragraph (a)(1) of this section, the taxpayer shall file with the District Court a bond in twice the amount of the taxes, interest and other charges prescribed in the Determination Notice that are contested on appeal, or the taxpayer shall deposit the disputed amount with the city manager in lieu of a bond. The taxpayer may satisfy the bond requirement by a savings account or certificate of deposit issued by a state or national bank or by a state or federal savings and loan association in accordance with § 11-35-101, C.R.S., equal to twice the amount of taxes, interest and other charges stated in the Notice and Final Determination. If the taxpayer deposits the disputed amount with the manager, no further interest shall accrue on the deficiency contested during the pendency of the action. After final action of the Supreme Court of Colorado in the case or when time for appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the manager and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed by subsection 3-2-22(j), B.R.C. 1981, on the amount refunded, according to the final order in the case. No claim for refund of amounts so deposited with the manager need be made by the taxpayer in order for the court to order the manager to repay them as herein provided.

Ordinance Nos. 4962 (1986); 5001 (1986); 5430 (1991)

3-2-27. Tax Constitutes Lien.

(a) The sales and use tax imposed by this chapter, together with all penalties and interest pertaining thereto, is a first and prior lien on tangible personal property other than the goods, stock in trade and business fixtures in which the taxpayer has an ownership interest, subject only to valid mortgages and other liens of record at the time of and prior to the recording of the notice of lien provided by subsection (c) of this section. When the tax is collected by a retailer or its agent, the sales and use tax imposed by this chapter together with all penalties and interest pertaining thereto, is a first and prior lien upon the goods, stock in trade and business fixtures in which the retailer or agent has an ownership interest except for goods that have been purchased in the ordinary course of business by retail customers, and such lien takes priority over other liens or claims of whatsoever kind or nature on such property.¹ The personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created by this subsection 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 used. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the city clerk. Motor vehicles which are properly licensed in this state showing the lessor as the owner thereof shall be exempt from the lien created by this subsection, except that said lien shall apply to the extent that the lessee has equity or a similar interest in the motor vehicle. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this subsection.²

(b) Whenever the business or property of any taxpayer is placed in receivership, docketed in bankruptcy, seized under distraint for nonpayment of property taxes, or an assignment is made for the benefit of creditors, all taxes, penalties and interest imposed by this title and for which the taxpayer is in any way liable under this title are a prior and preferred claim on the property of the taxpayer, except as to preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice of lien provided for in subsection (c) of this section property of the taxpayer other than the goods, stock in trade and business fixtures. No sheriff, receiver, assignee or other officer may sell the property of any taxpayer subject to the provisions of this title pursuant to process or order of any court without first ascertaining from the city manager the amount of any taxes, penalties or interest due and payable under this title. If there are any such taxes, penalties or interest due, the sheriff, receiver, assignee or other officer shall first pay the amount of said taxes, penalties or interest due out of the proceeds of such sale of the property before paying any monies to judgment creditors or other claimants, except that the officer may pay costs of the proceedings and other preexisting liens or claims as provided in this subsection.

(c) If any tax, penalty or interest imposed by this title and shown due by returns filed by the taxpayer or by assessments made by the city manager as provided in this title is not paid within ten days after it is due, the manager may issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalty and interest, the date of its accrual and the fact that the city claims a first and prior lien on the real and personal property of the taxpayer, except as to preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer other than the goods, stock in trade and business fixtures in which the taxpayer has ownership interest. The notice of lien shall be made on forms prescribed by the manager and verified by the manager or a duly qualified agent thereof and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or personal property or with any person in possession of any personal property or rights to property belonging to the taxpayer.

(d) The city manager shall release any lien as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, in the same manner as mortgages and judgments are released.

Ordinance Nos. 4873 (1984); 5001 (1986)

¹ *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983); *Dye Construction Co. v. Dolan*, 589 P.2d 497 (Colo. App., 1978); *Young v. Golden State Bank*, 632 P.2d 1053 (Colo. App., 1981).

² § 39-26-117(1)(b), C.R.S.

3-2-28. Liens on Construction Improvements.

(a) The full amount of unpaid taxes arising from and required to be reported on construction of personal property affixed to real property under this chapter, together with interest and penalties as herein provided, are a first and prior lien on the property of the taxpayer and take priority over all other liens of whatsoever kind and nature, except for liens for general taxes created by state law and for preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice of lien provided for in subsection 3-2-27(c), B.R.C. 1981.

(b) The city building inspector shall not make a final inspection on or issue a certificate of occupancy for any construction project unless a person has paid or arranged with the city manager to pay all taxes due under this chapter on all lumber, fixtures and any other building materials and supplies used in or connected with the construction, reconstruction, alteration, expansion, modification or improvement of any building, dwelling or other structure or improvement to real property within the city.

3-2-29. Sale of Business Subject to Lien.

(a) Any person who sells a business or stock of goods or quits business shall complete and file the returns required under this title within ten days of the date on which such person sold the business or stock of goods or quit business and indicate that it is a final return, that the business is sold, and the name and address of the purchaser of the business.

(b) A purchaser of a business who has acquired the furniture, fixtures and equipment of the business and engages in a similar business shall withhold sufficient funds from the purchase money to cover the amount of taxes, penalties and interest imposed by this title due and unpaid until the former owner provides a receipt from the city manager that such taxes, penalties and interest have been paid. If taxes, penalties and interest imposed by this title are due and unpaid after the ten day period herein provided, such purchaser of the business is liable for the payment of the taxes, penalties and interest imposed by this title due and unpaid to the city to the same extent as the seller of the business or stock of goods. But the purchaser of the business is not liable for such taxes, penalties and interest unless, within sixty days of the date that the final return is filed, the manager files a notice of lien in the office of the clerk and recorder of the county where the property is located, stating the amount of taxes, penalties and interest due or otherwise gives written notice to the purchaser of the business of the amount of taxes, penalties and interest due.

(c) Any person who obtains by purchase, foreclosure sale or otherwise, except at a sale conducted pursuant to subsection 3-2-32(e), B.R.C. 1981, any goods, stock in trade or business fixtures owned, leased or used by any person takes them subject to any lien of the city for any delinquent taxes owned by the prior owner of the property and is liable to pay all delinquent taxes of the prior owner, but only up to and including the value of property so acquired.

Ordinance No. 4873 (1984)

3-2-30. Certificate of Discharge of Lien.

(a) If any real or personal property is subject to a lien for payment of tax due to the city under this title, the city manager may issue a certificate of discharge of any part of the property subject to the lien if the manager finds that the fair market value of that part of such property remaining subject to the lien is at least twice the amount of the unsatisfied tax liability plus all prior liens upon such property.

(b) If any real or personal property is subject to a lien for payment of tax due to the city under this title, the city manager may issue a certificate of discharge of any part of the property subject to the lien if the manager is paid in partial satisfaction of the tax liability an amount determined by the manager to be not less than the value of the city's interest in the part of the property so discharged. In determining the value of the part of the property to be discharged, the manager shall consider the fair market value of the property and the value of the liens that have priority over the city's lien.

(c) A certificate of release of lien issued under this section is conclusive evidence that the city's lien upon the property is extinguished, but does not extinguish or release any portion of the lien on property not specified in the release.

3-2-31. Jeopardy Assessment.

(a) If the city manager finds that collection of the tax will be jeopardized for any reason, the manager may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof. Notwithstanding the provisions of sections 3-2-25, "Hearings (Applies to Entire Title)," and 3-2-26, "Appeals From City Manager's Decision (Applies to Entire Title)," B.R.C. 1981, the tax shall then be due and payable forthwith, and the manager may proceed to collect the tax as provided in section 3-2-32, "Enforcing the Collection of Taxes Due (Applies to Entire Title)," B.R.C. 1981.

(b) If the taxpayer subject to a jeopardy assessment provides security for payment of the tax satisfactory to the city manager, the manager may forego the jeopardy assessment collection proceedings.

3-2-32. Enforcing the Collection of Taxes Due (Applies to Entire Title).

(a) The city manager may issue a warrant directed to any employee, agent or representative of the city or any sheriff of any county of the state, commanding such person to distrain, seize and sell the personal property of the taxpayer in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any statute of the state of Colorado, for the payment of tax due together with interest and penalties thereon and costs of execution in the following circumstances:

- (1) When any deficiency in tax is not paid within twenty calendar days from the date of the Notice and Final Determination, Assessment and Demand for Payment and no hearing or extension or reconsideration has been requested;
- (2) When any deficiency in tax is not paid within thirty days from the date of the Determination Notice and no appeal from such deficiency assessment has been docketed in any District Court in and for Boulder County or filed with the Colorado Director of Revenue during such time, except that if the city manager finds that collection of the tax will be jeopardized during such period, the manager may immediately issue a distraint warrant;
- (3) When any deficiency in tax is not paid within the time prescribed in the judgment on any appeal to the District Court in and for Boulder County or the Colorado Director of Revenue;
- (4) Immediately upon making a jeopardy assessment or issuing a demand for payment upon jeopardy assessment as provided in section 3-2-31, "Jeopardy Assessment," B.R.C. 1981; or
- (5) After or concurrently with the filing of a notice of lien as provided in subsection 3-2-27(c), B.R.C. 1981.

(b) The city manager may apply to any judge of the municipal court for a warrant authorizing the manager to search for and seize property located within the city limits for the purpose of enforcing the collection of taxes under this title. Municipal judges shall issue such warrant after the manager demonstrates that:

- (1) The premises to which entry is sought contain property that is subject to levy and sale for taxes due; and
- (2) At least one of the preconditions of subsection (a) of this section have been satisfied, but if a jeopardy assessment has been declared under section 3-2-31, "Jeopardy Assessment," B.R.C. 1981, the city manager sets forth the reasons that collection of the tax will be jeopardized.

(c) The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with Rule 241(C) and (D) of the Colorado Municipal Court Rules of Procedure.

(d) The taxpayer may contest a warrant previously issued under the procedure provided by Rule 241(E) of the Colorado Municipal Court Rules of the Procedure, except that no proceeding to contest such warrant may be brought after five days prior to the date fixed for sale of the distrained property.

(e) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, and shall leave a copy of such account, signed by the agent making such distraint, with the owner or possessor; at the owner's or possessor's usual place of abode with some family member over the age of eighteen years; at the owner's or possessor's usual place of business with a stenographer, bookkeeper or chief clerk; or, if the taxpayer is a corporation, with any officer, manager, general agent or agent for process, with a statement of the sum demanded and the time and place of sale. The agent charged with collection shall forthwith cause to be published a notice of the time and place of sale and a description of the property to be sold in a newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the city manager, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two other public places within said county. The time fixed for the sale shall not be less than ten days nor more than sixty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned or postponed from time to time by the agent or sheriff, if the agent or sheriff deems it advisable, to a date certain but not for a time to exceed in all ninety days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price that includes the expenses of making the seizure and of advertising the sale. If the amount bid for the property at the sale does not equal the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased for the city. The property so purchased may then be sold by the agent or sheriff under such regulations as may be prescribed by the city manager for disposing of city property. The goods, chattels or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid together with the fees and other charges, or they may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(f) In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate is prima facie evidence of the right of the agent or sheriff to make such sale and conclusive evidence of the regularity of the proceedings in making the sale; it transfers to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold. Where such property consists of certificates of securities or other evidence of indebtedness in the possession of the agent or sheriff, the taxpayer shall endorse such certificates to the purchaser thereof and supply the purchaser with any proof of the taxpayer's authority to transfer or with any other requisite that may be necessary to obtain registration of the transfer of the certificate. Any surplus remaining above first the city's taxes, penalties, interest, costs and expenses of making the seizure and of advertising the sale and then any amounts distributed pro rata to other jurisdictions under recorded sales and use or personal property ad valorem tax liens shall be returned to the property owner or such person having a legal right to the property and, on demand, the city manager shall render an account in writing of the sale.

(g) In any case where a taxpayer has refused or neglected to pay any tax due to the city under this title and a lien has been filed as provided in subsection 3-2-27(c), B.R.C. 1981, the city manager may certify the amount of the tax due and unpaid interest, together with ten percent of the delinquent amount for costs of county collection, to the Boulder County Treasurer to be assessed and collected in the same manner as general taxes are assessed and collected, as provided in section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

Ordinance Nos. 4873 (1984); 5430 (1991)

3-2-33. Recovery of Unpaid Tax by Action at Law.

(a) In addition to other remedies provided in this title, the city manager may also treat any such taxes, penalties or interest due and unpaid as a debt due to the city from the taxpayer. If a taxpayer fails to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the manager may recover at law the amount of such taxes, penalties and interest in a county or district court of the county where the taxpayer resides or has a principal place of business that has jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the manager as herein provided is prima facie proof of the amount due.

(b) Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings no bond shall be required of the city manager, nor shall any sheriff require of the manager an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The manager may also prosecute appeals or writs of error in such cases without the necessity of providing bond therefor.

(c) In any case in which a taxpayer has refused or neglected to pay any tax, penalty or interest due to the city under this title and a lien has been filed upon any real or personal property, the city manager may cause a civil action to be filed in the district court of the county in which is situated any such property subject to said lien to enforce the lien and subject any real or personal property or any right, title or interest in such property to the payment of the amount due. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the court's findings concerning the interest of the parties and of the city. The proceedings in such action, the manner of sale, the period for and manner of redemption from such sale, and the execution of deed of conveyance shall be in accordance with the law of foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the property involved in such action if equity so requires.

(d) Any person having a lien upon or any interest in any real or personal property referred to in this section under or by virtue of any instrument duly filed of record in the office of the county clerk and recorder of the county in which such property is located prior to the filing of the notice that created a lien upon such property for taxes, penalties or interest or any person purchasing such property at a sale to satisfy such prior lien or interest may make a written request to the city manager to file a civil action as provided in this section. If the manager does not file such civil action within two months after receiving such written request, such person may file a civil action in the district court of any county where any such property is situated asking for a final determination of all claims of the city to and all liens of the city upon the property in question. Service of the process in such action upon the city shall be made upon the manager or an agent thereof. The court shall in such civil action adjudicate the matters involved therein in the same manner as in the case of civil actions filed under subsection (c) of this section.

3-2-34. City May Be a Party Defendant.

In any action affecting the title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein, and in any such action service of summons upon the city manager or any person in charge of the manager's office is sufficient service upon the city.

3-2-35. Injunctive Relief.

The city manager may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this title.

3-2-36. Obligations of Fiduciaries and Others.

(a) For the purpose of facilitating settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and the assets of corporations in the process of dissolution or that have been dissolved, the city manager may agree with the fiduciary or surviving corporate directors upon an amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for any of the periods of tax liability under this title. Payment in accordance with such agreement fully satisfies the tax liability for the periods that the agreement covers, unless the taxpayer has committed fraud or malfeasance or misrepresented a material fact regarding the tax or liability therefor.

(b) Except as provided in subsection (d) of this section, any personal representative of a decedent or the estate of a decedent, any trustee, receiver or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or that has been dissolved who distributes the estate or fund under such person's control without having first paid any taxes covered by this title due from such decedent, decedent's estate, trust estate, receivership or corporation and that may be assessed within the periods authorized by this title is personally liable to the extent of the property distributed by such person for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation imposed by or due under this title and assessed within the periods authorized by this title.

(c) The distributee of a decedent's estate, a trust estate or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation is liable under this title to the same extent that the decedent, trust estate, fund or corporation is liable under this title.

(d) If a tax under this title is due from a decedent or the decedent's estate, personal liability of the persons set forth in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issues within eighteen months after the decedent's personal representative files with the city manager a written request for such determination, filed after it has filed the decedent's final return or the decedent's estate's return to which the request applies. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

(e) If a tax under this title is due from a corporation that is in the process of dissolution or has been dissolved, personal liability of directors or stockholders as provided in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issued within eighteen months after the corporation files with the city manager a written request for such determination, filed after it has filed the corporation's return, but only if the request states that the dissolution was begun in good faith before the expiration of the eighteen month period and the dissolution is completed. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

3-2-37. Violations of Tax Chapter.

(a) No person shall fail or refuse to make any return required to be made, make any false or fraudulent return or any false statements in any return, fail or refuse to pay to the city manager any taxes collected or taxes, penalties or interest due to the city, evade the collection and payment of the tax in any manner, fail to keep or disclose records required by this title or violate any of the requirements of this title.

(b) Each and every twenty-four hours during which any violation of this title continues constitutes a distinct and separate violation thereof subject to the penalties prescribed in section 5-2-4, "General Penalties," B.R.C. 1981.

3-2-38. Limitations.

(a) Except as otherwise provided in this section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this title shall not be assessed, nor shall credit be taken, notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for collection be instituted, or any other action be commenced to collect the taxes more than three years after the date on which the tax was payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, when a notice of lien regarding such taxes was filed prior to the expiration of such period, in which case the lien shall continue for only one year after the filing of notice thereof.

(b) Proceedings for collection of taxes, interest and penalties may be commenced at any time in the case of a false or fraudulent return filed with the intent to evade tax and in the case of a taxpayer who fails to file a return as required under this title.

(c) For purposes of this section, a tax return filed before the last day prescribed by law or regulation issued under this title for filing of returns shall be considered to be filed on such last day.

(d) Where before the expiration of the time prescribed in this section for the assessment of tax, both the city manager and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon time. The period to which the manager and taxpayer agree may be extended by subsequent agreement in writing made before the expiration of the previously agreed upon time.

(e) Nothing in this section shall be construed to limit any right of any statute on the effective date of this title.

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

Ordinance No. 4962 (1986)

3-2-39. Earmarked Revenues.

(a) The amount of the sales and use tax revenue attributable to the levy and collection of one cent of sales and use tax for each fiscal year shall be set aside in a separate fund entitled "Open Space and Street Fund," and expended by the city only as follows:

(1) To pay a portion of the tax refund program as provided under chapter 3-5, "Tax Refund Program," B.R.C. 1981, as amended, such portion to be \$160,000.00 for 1984, and an equivalent amount as adjusted by the change in the Consumer Price Index each year thereafter.

(2) All other monies accruing to the open space and street fund shall be expended only for the acquisition of open space real property or interest in real property, or for the payment of indebtedness incurred for such acquisition, and for such expenditures as may be necessary to protect open space properties or interest in real properties so acquired from any and all threatened or actual damages, loss, destruction or impairment from any cause or occurrence, and also for projects related to transportation or for or related or appurtenant to transportation services or facilities, including, without limitation, studying, acquiring, constructing, providing, operating, replacing or maintaining transportation services or facilities and all services and facilities incidental or appurtenant thereto, and the payment of indebtedness for any such expenditures.

(b) Prior to the adoption of the city's budget for the succeeding fiscal year, the city council shall review the revenues and expenditures of the open space and street fund in order to assure that the period 1968-1969 and in every succeeding two-year period, the expenditures of monies during said period for acquisition of open space real property or interests in real property, or the payment of indebtedness incurred therefor and the expenses as may be necessary to protect open space real properties or interests therein so acquired from any and all threatened or actual damages, loss, destruction, or impairment from any cause or occurrence, do not exceed forty percent of the revenues accruing or expected to accrue to said fund during said two-year period, exclusive of that portion necessary to pay the portion of the tax refund program specified in paragraph (a)(1) of this section and exclusive of that portion authorized for transfer and transferred to the general fund; and to assure that in such two-year period the expenditures of monies for transportation and related or appurtenant facilities or service or indebtedness therefor described in paragraph (a)(2) of this section, do not exceed sixty percent of the revenues accruing or expected to accrue to said fund during such two-year period, exclusive of that portion necessary to pay the portion of the tax refund program specified in paragraph (a)(1) of this section and exclusive of that portion authorized for transfer and transferred to the general fund of the city.

(c) Pledged sales and accommodations tax revenue, as defined in the cooperation agreement dated May 7, 2003, between the city, the City of Boulder Central Area General Improvement District and the Boulder Urban Renewal Authority, means the 1.6 percent sales tax levied by the city on the retail sale of taxable goods and services within the Boulder Urban Renewal Authority's 9th and Canyon Tax Increment Area, which 1.6 percent includes the 1.0 percent general sales tax allocable to the city's general fund and the 0.6 percent transportation sales tax allocable to the city's transportation fund, each of which is a permanent city sales tax and does not have a stated expiration date, and the 5.5 percent accommodations tax in the nature of a sales tax levied by the city on the price paid for the rental of hotel rooms located within the tax increment area; but this shall not include any such tax if the same is repealed. This revenue is pledged to the Authority to support the District's bonds for the facility it constructed in the Tax Increment Area.

(d) From January 1, 1993 through December 31, 1993 the amount of sales and use tax revenue attributable to the levy and collection of the 0.15 percent of sales and use tax shall be used for general fund purposes. From January 1, 1994 through December 31, 1998, and thereafter for any remaining balances and interest thereon, the amount of sales and use tax revenue attributable to the levy and collection of the 0.15 percent of sales and use tax shall be set aside and used only for the following purposes:

- (1) Forty percent shall be paid into a human services fund, to be expended only for human services, including, without limitation, programs for health care, child care, mental health services, services for youth, services for the elderly and services for the disabled, prevention and mitigation of childhood physical and sexual abuse and domestic violence, emergency shelter for the homeless, family support services, job training, job development and job placement. All such expenditures shall be consistent with a human services master plan to be adopted by the city council.
- (2) Twenty percent shall be paid into a parks and recreation fund, to be expended as set forth in this paragraph. Prior to the issuance of bonds supported by this fund, the monies in the fund shall be paid into the permanent park and recreation fund. After the issuance of such bonds, the monies of this fund shall be expended by the

city council for the payment of the principal of and premium, if any, and interest and reserves, if any, on such bonds, for the following parks and recreation projects: softball fields, soccer fields and other parks and recreation capital improvements, including, without limitation, refurbishment of parks and recreation facilities, together with all necessary incidental appurtenant facilities, structures, furnishings and equipment. Any monies remaining in the fund on the day following any principal payment date on the bonds shall be expended by the city council to defray operations and maintenance costs associated with the softball fields, soccer fields and other parks and recreation capital improvements, to the extent reasonably required therefor. Any monies thereafter remaining in the fund shall be paid into the permanent park and recreation fund.

- (3) Eight percent shall be paid into an environmental fund, to be expended only for environmental projects, including, without limitation, a recycling center, a hazardous waste drop-off center and a pollution prevention program.
 - (4) Eight percent shall be paid into a youth opportunity fund, to be expended only for culture and arts programs, recreation, sports and other youth activities for young persons who are otherwise underserved in such programs, and to enhance the availability and attractiveness of such programs to young persons. Youth as used in this paragraph means persons under the age of twenty-one, or through graduation from high school, whichever comes first.
 - (5) Four percent shall be paid into an arts and cultural fund, to be expended only for the arts, culture and maintenance of city buildings used for the arts and culture, including, without limitation, stabilization of arts and cultural services delivery entities and development of arts and cultural programs, which may include, without limitation, community outreach, arts in education and access to arts and culture by underserved populations. All such expenditures shall be consistent with an arts and culture master plan and other relevant plans to be adopted by the city council.
 - (6) The remaining twenty percent shall be available for appropriation for basic municipal services, including, without limitation, parks and recreation facilities refurbishment and municipal facilities refurbishment, but if the city council finds that basic municipal services can be funded adequately without use of all or part of this portion of the tax, then the portion of the tax not allocated to basic municipal services shall be earmarked for and distributed to the five funds listed above. After the issuance of bonds supported by the revenues described in this paragraph, the revenues shall be expended by the city council for the payment of the principal of, and premium, if any, and interest and reserves, if any, on such bonds, together with all necessary incidental appurtenant facilities, structures, furnishings and equipment. Any such revenues on the day following any principal payment date on the bonds may be used for any basic municipal services purpose.
 - (7) For the year 1999 and thereafter, the city council may, after considering the recommendations of a citizen review committee appointed for that purpose, adjust the earmarking set forth in this subsection, except to the extent required for the repayment of bonds.
- (e) Effective January 1, 1988, the amount of the sales and use tax revenue attributable to the levy and collection of 0.38 percent of sales and use tax and required for payments on related bonds shall be set aside as follows:

Beginning at such time as any bonds are issued by the city pursuant to authority granted by the electors in November, 1987, for the purpose of acquiring any real or personal property or any interest therein and constructing and equipping library buildings, not in a floodway, the city manager shall determine the amount, if any, reasonably necessary for the payment within the next payment period following such determination of principal, interest, premium, if any, and reserves on such bonds and shall set aside a pro rata portion of such monies in a separate "Library Bond Fund." The monies of said fund shall be expended by the city council solely for the above-stated principal, interest, premium, and reserve bond payment purposes. The residual amount shall be added to the general fund of the city.

(f) From January 1, 1990 through December 31, 2018, the amount of the sales and use tax revenue attributable to the levy and collection of 0.33 percent of sales and use tax shall be set aside in an open space fund for the acquisition, maintenance, preservation, retention and use of open space lands as defined in section 170 of the charter, and the payment of any indebtedness and tax refunds related thereto.

(g) From January 1, 1996 through December 31, 2015, the amount of the sales and use tax revenue attributable to the levy and collection of 0.25 percent of sales and use tax approved by the electors in November, 1995, shall be set aside in a separate fund and pledged for the payment of the principal, interest and premium, if any, on the park bonds concurrently approved by the electors, and then for: development, operation and maintenance of the land and improvements purchased or constructed with the proceeds of the bonds; renovation and refurbishment or replacement of four pools; renovation and replacement of recreation facilities, playgrounds, mountain park trails and the civic park complex; improvements to recreation centers and development of new recreation projects to be determined in the future through the master planning process by the city council; maintenance of the community park site in north Boulder; development of a mountain parks environmental education program; and for renovation of city-owned historical and cultural facilities; with the remainder being dedicated for parks and recreation purposes.

(h) From January 1, 2007 through December 31, 2007, the amount of the sales and use tax revenue attributable to the levy and collection of 0.15 percent sales and use tax approved by the electors in November, 2006, shall be used for funding construction of phase I of a fire training center and, if any funds remain after construction of phase I, using the funds for construction of phase II or the purchase of fire apparatus, or both.

(i) From January 1, 2004 through December 31, 2019, the amount of sales and use tax attributable to the levy and collection of 0.15 percent sales and use tax approved by the electors in November, 2003, shall be used to provide additional revenues for open space purposes as defined in the charter, and the payment of any indebtedness therefor.

Ordinance Nos. 4812 (1984); 4879 (1985); 5015 (1986); 5047 (1987); 5222 (1989); 5492 (1992); 5780 (1996); 5958 (1997); 7323 (2003); 7505 (2006)

3-2-40. Participation in Simplification Meetings and Central Registry.

(a) The city manager will cooperate with and participate on an as-needed basis in a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

(b) In order to initiate and maintain a central registry of sales and use tax ordinances, the city manager will file with the Colorado Municipal League a copy of the city's sales and use tax chapter prior to the enactment of this ordinance.

(c) In order to keep the central registry current, the city manager will file any proposed amendment to the sales and use tax chapter with the Colorado Municipal League prior to its effective date.

(d) Failure to file any such ordinance or amendment shall not invalidate such ordinance or amendment.

Ordinance No. 5430 (1991)

3-2-41. Revenue Changes.

Pursuant to article X, section 20 of the Colorado Constitution, the qualified electors of the City of Boulder authorize the city to collect, retain and expend the full proceeds of the city's sales and use tax, admissions tax and accommodations tax and all available non-federal grants, notwithstanding any state restriction on fiscal year spending, including, without limitation, the restrictions of article X, section 20 of the Colorado Constitution. Such taxes and grants shall be excluded from the definition of fiscal year spending contained in article X, section 20 of the Colorado Constitution on and after January 1, 1993. Nothing in this section shall be interpreted to authorize any increase in the rate of taxation of the sales and use tax, the admissions tax or the accommodations tax, without a vote of the people if and when required pursuant to article X, section 20 of the Colorado Constitution.

Ordinance No. 5579 (1993)