

## ARTICLE 4-4

### USE TAX

**Section 4-4-1.** - Purpose. The purpose of this Article is to levy a use tax on the privilege of use, storage or consumption of construction or building materials and motor vehicles in the Town of Crested Butte which construction or building materials and motor vehicles were purchased at retail outside the Town of Crested Butte. This Article shall supersede the provisions of Article 2, Title 29, Colorado Revised Statutes, 1973, as amended.

**Section 4-4-2.** - Definitions.

A) As used in this Article, unless the context otherwise requires the words contained herein that are defined in Sections 102 and 201, Article 26, Title 39, Colorado Revised Statutes, 1973, as amended, shall be as defined in said sections, which definitions are incorporated herein by this reference.

B) "Floor area" shall be defined as in Section 15-2-3 of this Code.

**Section 4-4-3.** - Application of Funds. Funds received pursuant to this Article shall be deposited sixty per cent (60%) into the Town's capital fund and forty per cent (40%) into the Town's general fund.

**Section 4-4-4. Construction or Building Materials**

Use Tax.

A) Imposition and Amount. There is hereby imposed on the privilege of use, storage or consumption of construction or building materials in the Town which were purchased at retail outside the Town, a use tax of four per cent (4%) of the retail purchase price of such construction or building materials.

B) Payment and Collection. The use tax imposed this Section shall be paid to the Town Clerk, prior to issuance of a building permit or as provided hereinafter. For purposes of this Section, sixty per cent (60%) of the total valuation of any construction or building project shall be deemed to be the retail purchase price of the construction or building materials used, stored or by consumed in such project, which constitutes the taxable amount upon which this tax is imposed. The total valuation of any construction or building project shall be determined by applying the cost per square foot factor for the subject building type, "good" class, if available, as determined by the Building Inspector of the Town and as set forth in the section titled "Building Valuation Data" of the most current Building Standards, published by the International Conference of Building Officials, Whittier, California, copies of which are available for the Building Inspector of the Town, to 1) the total floor area of such project, including remodeled, renovated, repaired or restored area equal to or greater than one-half of the total floor area of the existing building, 2) fifty per cent (50%) of the area of unroofed porches or terraces and basements or attics used only for accessory storage or service and 3) fifty per cent (50%) of the area of remodeled, renovated, repaired or restored area provided that such remodeled, renovated, repaired or restored area is not greater than one-half of the total floor area of the existing building.

Any person who does not elect to pay the use tax estimate prior to the issuance of a building permit must monthly make reports and returns to the Town remitting the use tax and providing all information required by the Town.

No certificate of occupancy shall be issued for any building unless all use taxes due hereunder have been paid or arrangements thereof made with the Town Clerk.

C) Refund. Upon issuance of a certificate of occupancy by the Town for such construction project, the taxpayer may apply to the Town Clerk for refund of any overpayment of the estimated use tax by providing documentation of the actual purchase of all construction or building materials used, stored or consumed in the project upon which the tax was paid and any credits to which the taxpayer is entitled as set forth in Section 4-4-6.

D) Time Limit for Refund. The taxpayer must file for a refund under this Section within two years from the end of the year in which a certificate of occupancy is issued. A failure by the taxpayer to file for a refund within this time limit will result in the absolute forfeiture of the right to a refund, and any funds for which an application for refund is not received within the time limit herein established shall be deposited in the manner set forth in Section 4-4-3.(added Ord 6, 1999)

**Section 4-4-5. - Motor Vehicle Use Tax.**

A) Imposition and Amount. There is hereby imposed on the privilege of use, storage or consumption of every motor vehicle in the Town which was purchased outside the Town for which registration is required by the laws of the State of Colorado, a use tax of four per cent (4%) of the retail purchase price of the motor vehicle.

B) Registration, Payment, Collection and Remittance. No registration shall be made of any motor vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the State Department of Revenue, or its agents, until the tax due under Section 4-4-5 of this Code has been paid. The tax shall be collected by the authorized agent of the State Department of Revenue in the County in which the taxpayer resides. The Town Manager is authorized to enter into intergovernmental contracts with the State Department of Revenue and/or counties for collection of this tax, including the payment of a fee for such assistance.

**Section 4-4-6. - Exemptions, Credits and Application Procedure.**

A) Exemptions. The construction or building materials use tax and motor vehicle tax imposed by Section 4-4-4 and 4-4-5 shall not apply.

1) To the storage, use or consumption of said property by the United States government or the State of Colorado, or its institutions or political subdivisions, in their governmental capacities;

2) To the storage, use or consumption of said property the sale of which has already been subjected to a sales tax of another Colorado town, city or county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales tax of such Colorado town, city or county, but, in no event shall the amount of credit exceed the tax imposed by this Article. This exemption shall be denied if a tax paid such Colorado town, city or county was not legally due under the law of such town, city or county, or the State of Colorado under Colorado Revised Statutes, Section 29-2-105(2), or the laws of such town, city or county are not compatible with those of the Town regarding taxation and exemption therefrom as applied to the specific transaction; {rev. Ord. 2, Series 1994 3/21/94}

3) The use, storage, distribution or consumption in the Town of said property and upon the sale of which a retail sales tax at a rate equal to or great than four per cent (4%) has been imposed, collected and remitted to a municipal corporation organized and existing under the authority of the Constitution of the State of Colorado is exempt from the levy of the Town's Use Tax. If the rate of retail sales tax paid to such Colorado municipal corporation is less than four per cent (4%) the net difference between the tax due under

this Article and the tax computed at the rate of such other retail sales tax shall be due and owing, but, in no event shall the amount of credit exceed the tax imposed by this Article. This exemption shall be denied if a tax paid another Colorado municipal corporation was not legally due under the laws of such municipal corporation or the laws of the Colorado municipal corporation are not compatible with those of the Town as to specific taxation and exemption as applied to the transaction in question.

The use, storage, distribution or consumption in the Town of said property and upon the sale of which any other state or any other state in combination with any subdivision thereof has imposed and collected a retail sales tax at a rate equal to or greater than the combined Town, County, and State of Colorado tax rate and is exempt from the levy of the Town's Use Tax. If the rate of retail sales tax paid to such other state and/or its political subdivisions is four per cent (4%) or less, then the full four per cent (4%) Town Use Tax is due. If the rate of retail sales tax paid the other state and/or its political subdivisions is more than four per cent (4%) but less than the combined Town, County and State of Colorado tax rate then the Town's Use Tax will be due on the net difference between that tax paid in excess of four per cent (4%) and the combined Town, County and State of Colorado tax rate. In no instance shall the Town's tax credit or charge exceed four per cent (4%). This exemption shall be denied if a tax paid another state and/or its subdivisions was not legally due under the laws of such state and/or its subdivisions, or the laws of that state and/or its subdivisions are not compatible with those of the Town as to specific taxation and exemption as applied to the transaction in question.

4) To the storage, use or consumption of said property the sale of which is subject to a retail sales tax imposed by the Town;

5) To the storage, use or consumption of said property if such property was purchased outside the Town by a non-resident and used for a substantial length of time and for the primary purpose of which it was acquired prior to being brought into Town and, in the case of a motor vehicle, the owner registered, titled and licensed said motor vehicle outside of the Town or Gunnison County;

6) To the storage, use or consumption of said property brought into the Town for resale, either in its original form or as an ingredient of a manufactured or compounded product, not including building construction, in the regular course of business;

7) To the storage, use or consumption of said property if a written contract was entered into for the purchase thereof prior to the effective date of this Article.

B) Exemption Application Procedure. The taxpayer desiring an exemption or credit from the use tax imposed by Sections 4-4-4 and 4-4-5 may apply to the Town Clerk for such exemption or credit at any time based upon one or more exemptions set forth in this section and shall provide the Town with any documents the Town deems necessary to evaluate such request. Prior to the granting of any exemption or credit by the Town, the taxpayer shall be subject to all terms and provisions of this Article.

**Section 4-4-7. - Penalty.** In addition to payment of any tax due, any person violating this Article or any section hereof shall be guilty of a misdemeanor and, upon conviction thereof, may be punished by a fine not exceeding \$300.00 or by imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.

**Section 4-4-8. - Amendment.** The Town Council may amend, alter or change this Article at any time, except the provisions of Sections 4-4-3, 4-4-4(a), 4-4-5(a) or any other provision whereby the purpose of this Article would be defeated, including the revocation of this Article at such time as Gunnison County effects a county-wide use tax of four per cent (4%) on building or construction materials and motor vehicles provided, however, that the Town will be entitled to receive as much revenue under the Gunnison County use tax as it would be entitled to receive under this tax, and any such amendments, alterations or changes need not be submitted to the qualified electors of the Town for their approval.

**Section 4-4-9. - Use Tax - Nonapplicability.** For transactions consummated on or after January 1, 1986, the Town's use tax shall not apply to the storage of construction and building materials.

**Section 4-4-10. - Use Tax - Nonapplicability to Use or Consumption Occurring More Than Three Years After Most Recent Sale.** For transactions consummated on or after January 1, 1986, the Town's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the Town which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

**Section 4-4-11. - Use Tax - Collection -**  
**Limitation of Actions.** For transactions consummated on or  
after January 1, 1986:

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

B) In the case of failure to file a return, the use tax may be assessed and collected at any time.

**Section 4-4-12. - Use Tax - Refunds - Limitation of Actions.** For transactions consummated on or after January 1, 1986:

A) An application for refund of use tax paid under dispute by a purchaser or user who claims an exemption pursuant to 4-4-6 shall be made within sixty days after the storage, use, or consumption of the goods or services whereon an exemption is claimed.

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

**Section 4-4-13. - Use Tax - Interest on Underpayment, Nonpayment, or Extensions of Time for Payment of Tax.**

A) If any amount of use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-4-17 shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the Town Manager.

B) Interest prescribed under Section 4-4-13 through 4-4-16 shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax to which it is applicable.

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

D) Interest prescribed under Sections 14-4-13 through 14-4-16 of this ordinance on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

**Section 4-4-14.** - Use Tax - Deficiency Due To Negligence. If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of the ordinance or of authorized rules and regulations of the Town with knowledge thereof, but without intent to defraud, there shall be added ten per cent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 14-4-17, in addition to the interest provided by Section 14-4-13, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten days after written notice and demand to him by the Town Manager. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred per cent of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the Town Manager and an additional three per cent per month on said amount shall be added from the date the return was due until paid.

**Section 4-4-15.** - Use Tax - Neglect or Refusal to Make Return or to Pay. If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Town Manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten per cent thereof and interest on such delinquent taxes at the rate imposed under Section 14-4-17, plus one-half of one per cent per month from the date when due.

**Section 4-4-16.** - Penalty Interest on Unpaid Use Tax. Any use tax due and unpaid shall be a debt to the Town and shall draw interest at the rate imposed under Section 4-4-17, in addition to the interest provided by Section 4-4-13, from the time when due until paid.

**Section 4-4-17.** - Rate of Interest. When interest is required or permitted to be charged under any provisions of Sections 4-4-13 through 4-4-16 of this ordinance, the annual rate of interest shall be that established by the state commissioner of banking pursuant to Section 39-21-110.5, C.R.S.

**Section 4-4-18.** - Other Remedies. Nothing in sections 4-4-13 through 4-4-17 of this ordinance shall preclude the Town from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes.

**Section 4-4-19.** - Use Tax - Collection - Map of Municipal Boundaries. The Town Manager shall make available to any requesting vendor a map showing the boundaries of the Town. For transactions consummated on or after January 1, 1986, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a use tax. 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.

**Section 4-4-20. - Use Tax - Dispute Resolution Procedure - Deficiency Notice or Claim for Refund.** For transactions consummated on or after January 1, 1986, the taxpayer may elect a state hearing on the Town Manager's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this section.

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

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

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

1) the taxpayer has timely requested in writing a hearing before the Town and such Town has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the Town may submit a brief. The Town

shall hold such hearing and issue the final decision thereon within ninety days after the Town's receipt of the taxpayer's written request therefor, except the Town may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the Town shall hold such hearing and issue the decision thereon within one hundred eighty days of the taxpayer's request in writing therefor; or

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

D) If a taxpayer has exhausted his local remedies as provided in subsection (c) above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in Section 29-1-106.1 (3) through (7), C.R.S.

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

F) If the Town reasonably finds that the collection of use tax will be jeopardized by delay, the Town may utilize the procedures set forth in Section 39-21-111, C.R.S.