

## ARTICLE IV - Sales Tax

### Sec. 4-51. - Sales tax imposed.

There is hereby imposed on all sales of tangible personal property at retail and the furnishing of services as provided in Section 4-53 hereof, a tax equal to three and one-half percent (3 ½ %) of the gross receipts. The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Town Treasurer or by separate ordinance of the Town. If any vendor, during any reporting period, shall collect as a tax an amount in excess of three and one-half percent (3 ½ %) of his or her total taxable sales, he or she shall remit to the Town Treasurer the full amount of tax herein imposed and also such excess. Sales tax revenues generated and received by the Town at the taxation rate of two and one-half percent (2 ½ %) shall be deposited in the Marketing Fund, a special restricted fund, the terms of which are set forth under Article II of Chapter 4 of this Code. Sales tax revenues generated and received by the Town at the remaining taxation rate of one percent (1%) may be deposited in any Town fund to be used for any Town purpose, consistent with finance and budget laws and all other legal requirements.

### Sec. 4-52. - Definitions.

As used in this Article, the following words shall be construed to have the meanings defined below:

*Auction sale* means any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer at any sale defined herein, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property which is exempt under the provisions of Sections 4-56(8) and (9) of this Article, is a retailer or vendor as defined in this section and the sale made by him or her is a retail sale as defined in this section, and the business conducted by said auctioneer is accomplishing such sale in a transaction of a business as defined in Section 1-21 of this Code.

*Construction materials* means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wallboard, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters and wood preserver. The above materials, when used in forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials and, in such context, are therefore generally subject to sales tax. Construction materials do not include such things as: carpeting, equipment, furniture, removable fixtures, window coverings or similar items, which are also generally subject to sales tax.

*Doing business in the Town*, for the purpose of this Article, means the selling, leasing or delivering in the Town or any activity in the Town in connection with the selling, leasing or delivering in the Town of tangible personal property by a retail sale as defined in this Section, for use, storage, distribution or consumption within the Town. This term shall include, but shall not be limited to, the following methods of transacting business:

- a. The maintaining within the Town directly, or indirectly, or by a subsidiary, an office, distributing house, salesroom or house, warehouse or other place of business.
- b. The soliciting, either by direct representatives, indirect representatives or manufacturers' agents, by distribution of catalogues or other advertising, by use of any communications media, or by any other means whatsoever, of business from persons residing in the Town and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in the Town for use, consumption, distribution and storage for use or consumption in the Town.

*Farm close out sale* means a sale by auction or private treaty, of all tangible personal property of a farmer or rancher previously used by him or her in carrying on the farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his or her farming or ranching operations and is abandoning said operations on the premises whereon they were previously conducted, such sale shall not be deemed a farm close out sale within the meaning of this Article.

*Gross taxable sales* means the total amount received in money, credits and property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within the Town, and embraced within the provisions of this Article. The taxpayer may take credit in his or her report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail, valued in money, when such sales are made under conditional sales contracts, credit sales or any other form of sale where payment of the principal sum is extended more than sixty (60) days from the sale date, the amount of tax due on such sale for any particular taxing period shall be based on the amount of cash actually received by the taxpayer for such sale during that period. Taxes previously paid on gross sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited in a subsequent tax reporting period, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount collected. Separately-stated charges for services that are not otherwise taxable under this Article shall not be included in the calculation of gross taxable sales even if such services are rendered in connection with a taxable retail sale.

*Purchase price* means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, provided that such exchanged property is to be sold thereafter in the usual course of the retailer's business.

*Retail sale* includes all sales made within the Town, except wholesale sales.

*Retailer* or *vendor* means a person doing a retail business, known to the trade and public as such, and selling to a user or consumer, and not for resale.

*Sale* or *sale and purchase* includes installment and credit sales and the exchange of property, as well as the sale thereof for money, and every such transaction, conditional or otherwise, for consideration, constituting a sale; and also includes the sale or furnishing of electrical energy, gas, steam, telephone or telegraph services, taxable under the terms of this Article. The term sale or sale and purchase also includes the transaction of furnishing rooms or accommodations by any person, or any other combination of individuals by whatever name known to a person or persons who, for a consideration, use, possess or

have the right to use or possess any room or rooms in a hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, home or dwelling, mobile home, auto camp, trailer court or trailer park under any concession, permit, right of access, license to use or other agreement, or otherwise.

*Tangible personal property* means corporeal personal property. This shall not be construed to include newspapers, as legally defined in Section 24-70-102, C.R.S.

*Tax* means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require.

*Taxpayer* means any person obligated to account to the Town Treasurer for taxes collected or to be collected under the terms of this Article.

*Town Treasurer* means the individual holding such title in accordance with Section 6.7 of the Town of Snowmass Village Home Rule Charter, or his or her designee.

*Wholesale sale* means a sale by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale; and the latter sales shall be deemed retail sales, and subject to the provisions of this Article.

*Wholesaler* means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers for the purpose of resale.

#### **Sec. 4-53. Property and services taxed.**

There is hereby levied and there shall be collected and paid a tax on the amounts stated in Section 4-51 as follows:

(1) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.

(2) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if:

(a) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(b) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(i) The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this Article shall be prima facie evidence that such person is engaged in the business of selling

vehicles of the type involved in such transactions and that he or she is thereby subject to all other requirements necessary to engage in such activity, including but not limited to licensing, permitting, zoning and land use requirements.

(3) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises, for all intrastate telephone and telegraph services.

(4) For gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public or private corporations or enterprises.

**Sec. 4-54. - Tax imposed on rentals.**

When right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer or possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid.

**Sec. 4-55. - Tax imposed on full purchase price.**

The sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding however, such articles as are otherwise exempted in this Article. The sales price is the gross value of all materials, labor, service and the profit thereon, included in the price charged to the user or consumer.

**Sec. 4-56. - Exemptions from tax.**

- a) There shall be exempt from taxation under the provisions of this Article the following:
  - (1) All sales to the federal government, to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;
  - (2) All sales made to religious, charitable or eleemosynary organizations, in the conduct of regular religious, charitable or eleemosynary functions and activities;
  - (3) All sales which the State is prohibited from taxing under the Constitution or laws of the United States or the State;
  - (4) All sales of cigarettes;
  - (5) All sales of drugs dispensed in accordance with a prescription and all sales of prosthetic devices;
  - (6) All sales and purchases of commodities, such as food, clothing, prescription medicines, and medical (prosthetic) devices, and services to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guest ranch, mobile home, auto camp, trailer court or park, and who enters into or has entered

into a written agreement for occupancy of a room or rooms or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year;

(7) All commodities, such as food, clothing, prescription medicines, and medical (prosthetic) devices, which are taxed under provisions of Sections 39-26-101 to 39-26-119, C.R.S., and all commodities which are taxed under said provisions and the tax refunded, and all sales or purchases of aviation fuel upon which no state sales tax was in fact collected and retained prior to July 1, 1973, shall be exempt from taxation under this Article, and the storage, use or consumption of such aviation fuel shall be exempt from taxation under this Article; and

(8) All sales and purchases of neat cattle, sheep, lambs, swine and goats; all sales and purchases of mares and stallions for breeding purposes and all farm close out sales.

(9) All sales and purchases of feed for livestock or poultry, all sales and purchases of seeds and all sales and purchases of orchard trees.

(10) The sale and purchase 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 from another jurisdiction or documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid.

(11) All sales of personal property on which a specific ownership tax has been paid or is payable, when such sales meet both of the following conditions:

- a. The purchaser is a nonresident of or has its principal place of business outside the Town; and
- b. Such personal property is registered or required to be registered outside the limits of the Town under the laws of the State.

**Sec. 4-57. - Wholesale sales exempt from taxation.**

(a) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this Article.

(b) Sales and purchases of electricity, coal, gas, fuel oil or coke, for use for processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses, and newsprint and printers' ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this Article.

**Sec. 4-58. - Tax cannot be absorbed.**

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article will be assumed or absorbed

by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded.

**Sec. 4-59. - Retailer; multiple locations.**

A retailer doing business in two (2) or more places or locations taxable hereunder shall file a separate return for each location within the Town.

**Sec. 4-60. - Credit sales.**

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, chattel mortgage or conditional sale, there shall be paid upon each payment upon the account of the purchase price, that portion of the total tax which the amount paid bears in the total purchase price. The Town Treasurer may authorize a retailer doing business, fully or partly on a credit basis, to make returns on the basis of cash actually received. Thereafter, the retailer shall make return and pay taxes on that basis until further order of the Town Treasurer.

**Sec. 4-61. - Excess tax; remittance.**

If any vendor, during any reporting period, shall collect as a tax an amount in excess of three and one-half percent (3 ½ %) of his or her total taxable sales, he or she shall remit to the Town Treasurer the full net amount of the tax herein imposed and also such excess. The retention by the retailer or vendor of any excess sales tax collections over the three and one-half percent (3 ½ %) of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the Town Treasurer in the full amount declared to be remitted by the provisions of this Article, is declared to be unlawful.

**Sec. 4-62. - Vendor liable for tax; filing of returns.**

(a) Every retailer, also herein called vendor, shall be liable and responsible for the payment of an amount equivalent to three and one-half percent (3 ½ %) of all sales made by him or her of commodities or services as specified in Section 4-53, and shall before the twentieth day of each month make a return to the Town Treasurer for the preceding calendar month and remit an amount equivalent to said three and one-half percent (3 ½ %) on such sales to the Town Treasurer. Such returns of the taxpayer or his or her duly authorized agent shall contain such information and be made in such manner and upon such forms that the Town Treasurer may prescribe.

(b) If the accounting methods regularly employed by the vendor in the transaction of his or her business, or other conditions, are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the Town Treasurer, upon written request of the vendor, may accept reports at such intervals as will in his or her opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax; provided that the Town Treasurer may by rule permit taxpayers whose monthly tax collected is less than sixty dollars (\$60.00) to make returns and pay taxes at intervals not greater than every three (3) months.

**Sec. 4-63. - Disputes regarding exemptions, limitation of actions.**

(a) Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless, the seller shall collect and the purchaser shall pay such tax and the seller shall thereupon issue to the purchaser a receipt or certificate on forms prescribed by the Town Treasurer, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

(1) The purchaser may thereafter apply for a refund by submitting such request in writing to the Town Treasurer within sixty (60) days of the date of purchase.

(2) The Town Treasurer shall forthwith, after receipt of the application for refund, determine the applicability of the claimed exemption and issue a written decision thereon.

(b) An application filed by a taxpayer for a refund of sales tax collected and remitted by the taxpayer on the purchase, storage, use or consumption of goods, on the basis of exemption, shall be filed with the Town Treasurer within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed.

(c) All claims for refunds shall be processed in the manner provided in Section 4-65.

(d) It shall be unlawful for any seller to fail to collect, or purchaser to fail to pay, the tax imposed by this Article and on sales on which exemption is disputed.

**Sec. 4-64. – Estimate of deficiencies; Town’s remedies.**

(a) All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the Town, in the hands of such retailer, and he or she shall hold the same in trust for the sole use and benefit of the Town until paid to the Town Treasurer, and for failure to so pay to the Town Treasurer, such retailer shall be punished as provided by law.

(b) If a person neglects or refuses to make a return and payment of the tax as required by this Article, the Town Treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent; and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate of one percent (1%) per month from the date when due. Promptly thereafter, the Town Treasurer shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which deficiency notice shall be mailed to the taxpayer by certified mail to the taxpayer’s address on file with the Town. The deficiency notice shall include notification, in clear and conspicuous type, of the time limit to file a protest to the notice and that the taxpayer has the right to elect a hearing on the deficiency pursuant to Section 4-65. Any protest to the deficiency notice shall be filed with the Town Treasurer within thirty (30) days of the date of the mailing of the notice.

(c) If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer, or shown by assessments duly made as provided herein, are not paid within five (5) days after the same are due, the Town Treasurer shall issue a notice, setting forth the name of the taxpayer, the amount of tax, penalties and interest, the date of the accrual thereof, and that the Town claims a first and prior lien therefor, second only to the first and prior lien claimed by the State, on the real and tangible personal property of the taxpayer except as to the pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as herein provided on the property of the taxpayer. Said notice shall be on forms prepared by the Town

Treasurer, and shall be verified by him or her or his or her duly qualified deputy, or any duly qualified agent of the Town Treasurer whose duties are the collection of such tax, 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 tangible personal property; and the filing of such notice shall constitute a lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or any time when taxes due are unpaid, whether such notice be filed or not, the Town Treasurer may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of any county of the State, commanding him or her to levy upon, seize and sell sufficient of the real and personal property of the tax debtor found within his or her county for the payment of the amount due, together with interest, penalties and costs, as may be provided by law, subject to valid pre-existing claims or liens.

(d) Such revenue collector or sheriff shall forthwith levy upon sufficient of the property of the taxpayer, or any property used by such taxpayer in conducting his or her retail business, and said property so levied upon shall be sold and all respects with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment in a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrant, as are now allowed by law for similar services.

(e) Any lien for taxes as shown in the records of the County Clerk and Recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Town Treasurer in the same manner as mortgages and judgments are released.

(f) The Town Treasurer may also treat any such taxes, penalties or interest due and unpaid as a debt due the Town from the vendor. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon due, the Town Treasurer may receive at law the amount of such taxes, penalties and interest in the county or district court having jurisdiction of the amounts sought to be collected. The return of the taxpayer or assessment made by the Town Treasurer, as herein provided, shall be prima facie proof of the amount due. Such actions may be actions in attachment, and writs or attachment may be issued to the sheriff. It shall be the duty of the Town Attorney when requested by the Town Treasurer to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies provided in this Article.

(g) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the Town may be made a party defendant for the purpose of obtaining adjudication or determination of its lien upon the property involved therein and in any such action service of summons upon the Town Clerk shall be sufficient service and binding upon the Town.

(h) The Town Treasurer is hereby authorized to waive, for good cause shown, any penalty assessed as in this Article provided.

(i) It shall be unlawful and a misdemeanor, punishable as provided under Section 1-72 of this Code, to violate any provision of this Article, to fail or refuse to make any return required hereby, or to make any false or fraudulent return, or any false statement in any return, or to prepare such returns in a reckless or grossly negligent manner, to fail or refuse to make timely payment to the Town Treasurer of any taxes collected or due to the Town, or in any manner to evade the collection and timely payment of the tax, or any part thereof, imposed by this Article, or for any person or purchaser to fail or refuse to pay such tax or evade the timely payment thereof, or to aid or abet another in any attempt to evade the timely payment of tax imposed by this Article.

(1) In his or her discretion, the Town Treasurer may direct the issuance of a summons and complaint to appear before the Snowmass Village Municipal Court to any person who may be in violation of any of the provisions of this Article.

(2) Issuance of a summons and complaint by the Town and subsequent conviction of a violation of this Article in the municipal court shall not prohibit the court from requiring payment of all taxes, penalties and interest found to be due under this Article in addition to any fine imposed by the court. Each and every twenty-four (24) hour period of violation shall constitute a separate violation of this Article.

(3) Nothing contained in this subsection (i) shall preclude the Town Treasurer from instituting a legal or equitable action in the appropriate District Court for the purposes of enforcing the provisions of this Article or from pursuing any other remedy available to the Town pursuant to this Section 4-64 or as otherwise authorized by law. In the event such civil action is undertaken, the Town shall be entitled to recover its attorney's fees and costs of litigation expended in said action as a portion of its judgment rendered therein.

**Sec. 4-65. - Claims for refunds; taxpayer remedies.**

(a) In the event that the taxpayer disputes the tax liability imposed by the Town, either by deficiency notice or otherwise, he or she shall file a written demand for an informal hearing and determination of tax liability within thirty (30) days from the date of mailing of the notice, which demand will stay the sale under any distraint warrant until the conclusion of the hearing. The written demand must include: Name, business address and license number of the taxpayer, a copy of the notice sent by the Town, the taxable periods and the amounts of tax which are being disputed, and a statement of the grounds upon which the taxpayer bases the claim.

(b) Upon receipt and review of the taxpayer's written demand, the Town Treasurer may grant the taxpayer's requested relief, without conducting a hearing, if the Treasurer finds that the written dispute is valid on its face. Notice of such decision and refund to the taxpayer, if any, shall be promptly given to the taxpayer in writing. If the Treasurer does not grant all of the taxpayer's requested relief on the basis of the written demand, the Treasurer shall set the time and place for the informal hearing, to be held as quickly as possible. The hearing shall be held before the Town Treasurer or a hearing officer appointed by the Town Treasurer who possesses education or experience in tax administration matters and who can render a proper decision. In the event that it is determined at the hearing that the taxpayer's liability is less than the amount in the possession of the treasurer, such excess shall be paid to the taxpayer forthwith.

(c) Failure to demand an informal hearing and determination of tax liability shall constitute an absolute and final waiver of the right to contest such liability either administratively with the treasurer, with the executive director of the state department of revenue, or by judicial review pursuant to state law. When such determination is requested or when a request for a refund is timely made, the final decision rendered therein shall be appealable as provided herein.

(d) The hearing provided under subsection (b) above shall be informal and no transcript, rules of evidence or filing of briefs shall be required, but the taxpayer and the Town may elect to submit written information and present informal witness testimony. The hearing shall be held and a decision issued within ninety (90) days after the receipt of the taxpayer's written request therefor. The Town Treasurer or appointed hearing officer 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 hearing shall be held and a decision issued within one hundred and eighty (180) days of the taxpayer's request in writing therefor.

(e) If the dispute was not resolved by the informal hearing, the taxpayer may elect to pursue one of the following avenues of appeal within thirty (30) days of the Town's final decision:

(1) The taxpayer may request a formal hearing on the record before a hearing officer, who shall be a treasurer/finance director from a Colorado municipality or a neutral arbitrator selected by agreement of the parties. The hearing shall be held within sixty (60) days of the taxpayer's request. Those costs of compensation to the hearing officer and transcription costs shall be divided equally between the Town and the taxpayer.

a. The formal hearing will be on the merits and on the record. The taxpayer shall be responsible for retention of his own legal counsel, if he chooses to be so represented. A transcript of the hearing will be maintained and the Colorado Rules of Evidence shall be observed unless otherwise agreed by the parties. The Town shall not be entitled to file a legal brief unless the taxpayer chooses to submit such a brief or statement of legal authorities. The parties may call witnesses who will be subject to cross-examination.

b. Upon notice to the taxpayer that the Town has granted the taxpayer a formal hearing, the taxpayer shall deposit with the Town fifty (50) percent of the amount of the tax deficiency in dispute. The taxpayer will also pay to the Town all amounts of tax and related penalties and interest not in dispute. The taxpayer may request permission of the Town Treasurer to post security or a bond in lieu of cash payment of the amount in dispute, which request will be granted by the Town Treasurer if, in his/her sole determination, the bond or security is adequate to protect the Town's interest. Failure to post the cash or security required herein shall result in the denial of taxpayer's appeal.

c. In the event the final decision denies the taxpayer's claims, such taxes, penalties and interest unpaid shall become immediately payable without further notice of demand for payment by the Town. The Town may use all additional remedies to collect unpaid taxes, penalties and interest as provided for under section 4-64.

d. Any appeal from the decision rendered after such formal hearing shall be pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(2) The taxpayer may request the executive director of the department of revenue to conduct a hearing in accordance with state law.

(3) The taxpayer may appeal the Town's final decision to district court in accordance with state law.

(f) The taxpayer shall have no right to any form of appeal under subsection (e) of this section if he or she has not exhausted administrative remedies or if he or she fails to pursue one of the avenues of appeal within the time period described therein. For purposes of this subsection, "exhaustion of administrative remedies" means:

(1) The taxpayer has timely requested in writing an informal hearing before the Town in accordance with subsection (a) of this section and the Town has held such hearing and issued a final decision thereon; or

(2) The taxpayer has timely requested in writing an informal hearing before the Town in accordance with subsection (a) of this section and the Town has failed to hold such hearing or has failed to issue a final decision within the time period described therein.

(g) In the event the Town's final decision denies the taxpayer's claims, such taxes, penalties and interest unpaid shall become immediately payable without further notice of demand for payment by the Town. The Town shall use all additional remedies to collect unpaid taxes, penalties and interest as provided for under section 4-64.

(h) Every sale and purchase conducted within the Town is presumed to be taxable. At any hearing or proceeding to determine the taxability of a transaction, the burden of proving that any person is exempt from taxation or any article, commodity or transaction is exempt under the provisions of this Article shall be upon the person asserting the exemption.

#### **Sec. 4-66. – Administrative authority of Town Treasurer.**

(a) The administration of this Article is vested in and shall be exercised by the Town Treasurer, who shall administratively promulgate and amend, from time to time, forms and reasonable rules and regulations in conformity with this Article for the making of returns and reports, ascertainment and collection of the tax imposed hereunder, and for the proper administration and enforcement of this Article.

(b) The rules and regulations as prescribed by the Town Treasurer and, as from time to time are amended by the Town Treasurer, shall be published on the Town web site prior to their effectiveness. All such rules and regulations, and any forms developed by the Town Treasurer in accordance with this Article, shall be available to the public for inspection and copying during regular business hours at the Town of Snowmass Village Town Hall, 130 Kearns Road, Snowmass Village, CO 81615, and on the Town's web site: [www.tosv.com](http://www.tosv.com).

(c) The Town Treasurer shall determine the meaning and application of all terms and provisions of this Article, subject to the appeal and review process set forth in section 4-65.

#### **Sec. 4-67. - Deficiency due to negligence.**

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate of one-half (.5%) percent per month on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest shall become due and payable ten (10) days after written notice and demand to him or her by the Town Treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) 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 (10) days after written notice on demand by the Town Treasurer, and an additional one percent (1%) per month on said amount shall be added from the date the return was due until paid.

**Sec. 4-68. - License and tax.**

The license and tax imposed by this Article shall be in addition to all other licenses and taxes required or imposed by law, except as herein otherwise provided.

**Sec. 4-69. - Sales tax; credit for sales or use taxes previously paid to another municipality.**

The Town sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another municipality equal to or in excess of the Town sales tax. A credit shall be granted against the Town sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the other municipality. The amount of the credit shall not exceed three and one-half percent (3 ½ %).

**Sec. 4-70. - Intercity claims for recovery.**

The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes to the Town.

(a) As used herein, "claim for recovery" means a claim for reimbursement of sales tax paid to the wrong taxing jurisdiction.

(b) When it is determined by the Town Treasurer that sales tax owed to the Town has been reported and paid to another municipality, the Town shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.

(c) The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for a recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approves or denies, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the Town submits a claim for recovery may, for good cause, request an extension of time to investigate the claim and approval of such extension by the Town shall not be unreasonably withheld.

(d) Within ninety (90) days after receipt of a claim for recovery, the Town shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the Town shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly.

(e) The Town may deny a claim on the grounds that it has previously paid a claim for recovery involving the same transaction(s) directly to the taxpayer.

(f) The period subject to a claim for recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

**Sec. 4-71. - Limitations.**

The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, or any action to collect same be commenced, more than three (3) years after the date on which the tax was or is payable; nor shall a 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 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 commenced at any time. Before the expiration of such period limitation, the taxpayer and the Town Treasurer may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

**Sec. 4-72. - Business records; audits.**

(a) It shall be the duty of every person doing business in the Town, or otherwise subject to the tax under the provisions of this Article, or a person requiring a license under section 4-2 hereof to keep and preserve suitable records of all sales and transactions as may be necessary to determine the applicability of the provisions of this Article thereto, and to keep such invoices, sales memoranda, books and records for a period of three (3) years; and they shall be open at any time for examination by the Town Treasurer. Failure to keep and preserve suitable records as required by this section shall be a violation of this Code. Suitable records include, but are not limited to, the following:

- (1) Supporting documentation for every line item used on the sales tax return.
- (2) Sales and lease invoices, contracts.
- (3) Purchase journals and invoices.
- (4) Check books and/or check registers.
- (5) State sales tax returns.
- (6) Federal and state income tax returns.
- (7) Sales journals.
- (8) General ledgers.
- (9) Journal entries.
- (10) Chart of accounts.
- (11) Financial reports.
- (12) All other supporting documents not listed above.

(b) Business records are to be stored or kept within reasonable access of Town personnel. Should a taxpayer's business records be maintained at a location outside the Town's jurisdiction, the Town

maintains the right to inspect such records at the taxpayer's location within the Town or to require the taxpayer to make the records available at Town offices.

(c) The Town maintains the authority to audit, upon reasonable notice, the business records of any taxpayer doing business in the Town. If the Town provides written notice to the taxpayer prior to the expiration of the thirty-six-month statute of limitations that the taxpayer's records will be audited pursuant to this Article, such limitation period shall be extended until the conclusion of the audit.

(d) The Town shall ordinarily audit a taxpayer's records only at the taxpayer's business location where such business records are routinely kept. Notwithstanding the foregoing, the treasurer may, under exceptional circumstances, permit limited scope auditing of a taxpayer's records by mail. Such a determination is solely within the discretion of the Town Treasurer and is not an appealable issue.

**Sec. 4-73. - Application.**

The sales tax imposed by this Article on the privilege of selling tangible personal property at retail shall apply to every retailer doing business in the Town. For the purpose of this Article, all retail sales are deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town. In the event a retailer has no permanent place of business in the Town, the place at which a retail sale is consummated for purposes of this Article is the location at which the purchaser ultimately takes possession of the purchased property. The amount subject to tax shall not include the amount of any state sales or use tax.

**Secs. 4-74—4-90. - Reserved.**