

ORDINANCE NO. 92-3

AN ORDINANCE TO IMPOSE A USE TAX FOR THE PRIVILEGE OF STORING, USING OR CONSUMING WITHIN THE TOWN OF HUDSON ANY CONSTRUCTION AND BUILDING MATERIALS PURCHASED AT RETAIL AND THE PRIVILEGE OF STORING, USING AND CONSUMING AT RETAIL ANY MOTOR VEHICLE AND OTHER VEHICLES ON WHICH REGISTRATION IS REQUIRED AS PROVIDED IN 29-2-101, et seq., COLORADO REVISED STATUTES, AS AMENDED, UPON APPROVAL OF THE REGISTERED ELECTORS OF THE TOWN OF HUDSON AT A GENERAL ELECTION.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. Purpose. The purpose of this ordinance is to impose a use tax for the privilege of storing, using or consuming within the Town of Hudson any construction and building materials and/or any motor vehicle and other vehicles on which registration is required and which are purchased at retail.

Section 2. Definitions. For the purpose of this Ordinance, the definitions of words herein contained shall be defined in Title 39, Article 26, Section 102 and 201 of the Colorado Revised Statutes, as amended, and said definitions are incorporated herein by this reference.

Section 3. Use Tax Created. This Ordinance hereby imposes a tax of three percent (3%) as a use tax to be imposed only for the privilege of storing, using, or consuming within the Town of Hudson any construction and building materials, and on motor and other vehicles on which registration is required which are purchased at retail.

Section 4. Property Exempt. There shall be exempt from taxation under the provisions of this Ordinance all tangible personal property which are exempt from state use tax under the provisions of Article 26 of Title 39, C.R.S., which exemptions are incorporated by this reference.

Section 5. Collection of Use Tax.

(a) The use tax imposed by this Ordinance upon motor and other vehicles shall be collected by the authorized agent of the Department of Revenue in Weld County.

(b) The use tax on construction and building materials stored, used or consumed within the Town must be paid upon the issuance of a building permit by the Town. In no event shall any certificate of occupancy be issued prior to the full payment to

the Town of the use tax due and owing pursuant to this Ordinance. The amount of the use tax for construction and building materials shall be as follows:

(1) The amount collected will be based on three percent (3%) of the job material valuation. The job material valuation is established as one-half (1/2) of the total value of the job. The total value of the job equals all the construction work for which the permit is issued as well as all finishing work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems, and any other permanent equipment.

(2) If the taxpayer can prove the actual total value of the job, the total value shall be based on the actual value of the construction and building materials. Otherwise, a Town building official, as designated by the Board of Trustees, shall determine the value of the construction and building materials.

In no event shall any certificate of occupancy be issued prior to the full payment to the Town of Hudson of all use tax due and owing pursuant to this Ordinance.

Section 6. 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 by the Board of Trustees or its designee for payment, interest on such amount at the rate imposed under Section 10 of this ordinance 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 extensions of time for payment and shall be determined without regard to any notice and demand for payment issued 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 Board of Trustees or its designed.

(b) Interest prescribed under Sections 6 through 9 of this ordinance 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 has not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed under Sections 6 through 9 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 7. 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 ordinances or of authorized rules and regulations of the Town 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 imposed under Section 10, in addition to the interest provided by Section 9, 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 Board of Trustees or its designee. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) 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 Board of Trustees or its designee and an additional three percent per month on said amount shall be added from the date the return was due until paid.

Section 8. 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 Board of Trustees or its designee 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 imposed under Section 10, plus one-half of one percent per month from the date when due.

Section 9. 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 10, in addition to the interest provided by Section 6, from the time when due until paid.

Section 10. Rate of Interest. When interest is required or permitted to be charged under any provisions of Sections 6 through 9 of this ordinance, the annual rate of interest shall be

that established by the state commissioner of banking pursuant to
' 39-21-110.5, C.R.S.

Section 11. Other Remedies. Nothing in Sections 6 through 9 of this ordinance shall preclude the Town from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes.

Section 12. Use Tax - Dispute Resolution Procedure - Deficiency Notice or Claim for Refund. A taxpayer may request a state hearing on the Board of Trustees' final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section 12.

(a) As used in this Section 12, "state hearing" means a hearing before the executive director of the department of revenue or delegate thereof as provided in ' 28-2-106.1(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 amount of use tax or 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 ' 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 Board of Trustees and the Board of Trustees 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 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 eight 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 ' 29-2-106.1(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 or a claim for refund to the district court of the County of Weld as provided in ' 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 ' 39-21-111, C.R.S.

Section 13. Upon adoption of this Ordinance by the Board of Trustees of the Town of Hudson, this Ordinance shall be submitted to a vote of the registered electors of the Town of Hudson at a general election to be held on the 7th day of April, 1992 in conformity with the provisions of Title 29, Article 2 and Title 31, Article 10 of the Colorado Revised Statutes, as amended.

Section 14. Amendments. The Board of Trustees, by a majority vote, may amend, alter or change this ordinance except as to the three percent (3%) tax herein imposed.

Section 15. Penalties. Any person violating any provision of this article shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day that a violation of this ordinance continues shall be deemed a separate offense.

Section 16. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 17. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgement shall not affect application to other persons or circumstances.

Section 18. Effective Date. The effective date of the use tax imposed by this Ordinance shall be JULY 1, 1992.

INTRODUCED, READ IN FULL, ADOPTED AND ORDERED PUBLISHED ONCE IN FULL this 26th day of February, 1992.

TOWN OF HUDSON, COLORADO

SEAL

Robert D. Masden, Mayor

Attest:

Kelly M. Smith, Town Clerk

PASSED ON SECOND AND FINAL READING this _____ day of _____, 1992

SEAL

Robert D. Masden, Mayor

Attest:

Kelly M. Smith, Town Clerk