

**Sec. 53-25. Imposition of tax.**

There is levied and there shall be collected and paid a tax in the amount stated in this article, as

- (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 the exchange, excluding however, from the consideration or purchase price the fair market value of the exchanged property if such exchanged property is to be sold thereafter in the usual course of the retailer's business.
- (3) Upon the purchase price or charge for telephone and telecommunications services, including in addition to audio and video transmission and reception, other two-way electronic or electromagnetic wave transmissions, receptions or communications of any sort, by or through any medium, whether such services are furnished by public or private corporations or associations, that, except as otherwise provided by this article for mobile telecommunication services, both originate in and are charged to a telephone number or an account located within the city, excepting, however, monthly or other periodic usage charges that represent varying amounts billed to accounts for a subscriber's actual use of interstate services provided by a long-distance telecommunications company and charged to the subscriber by or on behalf of a long-distance telecommunications company.
- (4) Upon the purchase price or charge for coal, petroleum, liquid petroleum, electric, steam and natural gas services, and any other products used for energy-producing purposes, whether furnished by municipal, public or private corporations or associations, furnished and sold for domestic, commercial or industrial consumption and not for resale.
- (5) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, boardinghouses, carryout shops and other places at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles and other mobile facilities. Cover charges, admission or entrance fees, and mandatory service or service-related charges, whether described as tips, gratuities or otherwise, shall be included as part of the amount paid for such food or drink.
- (6) Upon the purchase price or charge for the furnishing or sale to customers within the city of informational or entertainment service wherein the relay or transmission of electromagnetic waves through any medium, tangible or intangible, including cable, glass fiber and ambient air, is necessary for the service to be received, including, but not limited to, pay television, excepting however, telephone and telecommunications services described in section 53-25(3) and television, cinema or similar programming provided at a theater or similar place open to the public.
- (7) Upon the purchase price or charge for data processing equipment and data processing

(Ord. No. 666-81, § 1, 12-14-81; Ord. No. 638-84, §§ 7, 8, 12-3-84; Ord. No. 679-87, § 3, 11-23-87; Ord. No. 922-91, §§ 2--4, 12-9-91; Ord. No. 649-02, § 1, 8-12-02)

**Sec. 53-38. Return required upon sale of business; lien on purchaser.**

(a) Any retailer, whether or not licensed hereunder, that sells out his business or stock of goods or quits business within the city shall be required to return the taxes levied by this article within ten (10) days after the date the retailer sells his business or stock of goods or quits business and at said time pay over to the manager all such taxes collected by him, and in addition thereto, the retailer shall pay over to the manager all taxes levied hereunder upon the sale itself of said business, stock of goods, fixtures and equipment to the purchaser; and the purchaser thereof, or the successor in business, shall be required to withhold sufficient of the purchase money from said retailer and seller to cover and pay the amount of said taxes due and unpaid by the seller, including the taxes due upon said sale to said purchaser, until such time as the former owner, said retailer and seller shall produce a receipt from the manager showing that all of said taxes have been paid, or a certificate that no taxes are due.

(b) If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in this section and the taxes are due and unpaid after the ten-day period allowed, the purchaser, as well as the retailer, shall be liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes same subject to the lien for any delinquent sales taxes owed by such retailer and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

(Ord. No. 666-81, § 1, 12-14-81; Ord. No. 638-84, § 15, 12-3-

**Sec. 53-40. Trust status of tax in possession of retailer.**

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 city, in the hands of such retailer, and the retailer shall hold the same in trust for the sole use and benefit of the city until returned and paid over to the manager as herein provided, and the failure so to pay over to the manager shall constitute a violation of this article by the retailer.

(Ord. No. 666-81, § 1, 12-14-

**Sec. 53-59. Tax lien.**

(a) The tax imposed by this article, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens upon the goods, merchandise, furniture and fixtures, tools and equipment of any retailer, or used by any retailer in conducting his retail business under lease, title retaining contract or other contract arrangement, within the city and shall take precedence on all such property over other liens or claims of whatsoever kind or nature and may be foreclosed by seizing under distraint warrant and selling so much of said merchandise, furniture and fixtures, tools and equipment as may be necessary to discharge said lien.

(b) The real or personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created in this section (1) if such property can reasonably be identified from the lease description and (2) if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease until its termination if the lease is filed or recorded, within ten (10) days after the execution of the lease, with either the executive director of the state department of revenue or the clerk and recorder of the city. Where the lessor and lessee are blood relatives, relatives by law, or have twenty-five (25) percent or more common ownership, a lease between them shall not be considered bona fide for the purpose of this section.

(c) Any retailer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in this section, may be required by the manager to make return of and pay over taxes collected at more frequent intervals than monthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(d) The extension herein contained of the preexisting right of distress to merchandise, furniture and fixtures, tools and equipment of or used by the taxpayer shall apply to tax obligations in default at the time of the passage of this amendment and the existing liens created by Ordinance No. 437, Series of 1964, and Ordinance No. 666, Series of 1981, shall continue to apply, subject to the limitations in this article contained. A sale at retail from a stock of merchandise in the regular course of business shall release the item or items sold from the lien created by this section, but newly acquired merchandise shall come and remain under such lien until sold at retail or until the tax is paid.

(Ord. No. 666-81, § 1, 12-14-81; Ord. No. 638-84, § 23, 12-3-84; Ord. No. 922-91, § 13, 12-9-91; Ord. No. 1027-02, § 2, 12-16-02)

**Case law annotations:** The mere use of personal property subjects it to lien, notwithstanding lack of ownership the using party. *Horacek v. Cherry Creek Corporation*, 28 Colo. App. 258, 472 P. 2d 158 (Colo. Ct. of App., Div. II, 1970).

Secs. 53-60, 53-61.

Sec. 53-62.

**Editor's note:** Section 24 of Ord. No. 638-84, adopted Dec. 3, 1984, repealed § 53-62, "release of lien," as derived from § 1 of Ord. No. 666-81, adopted Dec. 14, 1981.