

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2013

COUNCIL BILL NO. CB13-0679
COMMITTEE OF REFERENCE:
GOVERNMENT & FINANCE

4
5 **A BILL**

6 **For an ordinance amending the City Retail Sales Tax Article, Article II, Chapter**
7 **53 of the Revised Municipal Code and the City Use Tax Article, Article III,**
8 **Chapter 53 of the Revised Municipal Code to exempt purchases of aircraft**
9 **parts, aircraft simulator parts, and rail carrier parts from taxation.**
10

11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

12 **Section 1.** That section 53-24 of the Revised Municipal Code be and is hereby amended
13 by adding the underlined language and deleting the stricken language to read and be read as
14 follows:

15 **Sec. 53-24. Definitions.**

16 As used in this article, the following words, phrases and, where applicable, their
17 declensional and inflectional forms shall have the meanings given to them in this section except
18 where the context in which they are used indicates clearly and requires a different meaning
19 according to customary usage. The words "shall" and "must" are to be construed as mandatory
20 and not directory. In addition to the following definitions, the definitions and general provisions of
21 chapter 1 shall be applicable insofar as not expressly inconsistent with the provisions hereof.

22 (1) *Aircraft* means any contrivance now known or hereafter invented, used, or designed for
23 navigation or flight through the air and designed to carry at least one person. "Aircraft" shall
24 not include aircraft parts; ~~"aircraft parts" include, but are not limited to expendable aircraft~~
25 ~~parts and rotatable aircraft parts.~~

26 (2) *Aircraft part* means any tangible personal property that is intended to be permanently
27 affixed or attached as a component part of an aircraft.

28 (3) *Aircraft simulator* means a Flight Simulator Training Device (FSTD) as defined in Part I of
29 Title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of
30 Title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration
31 Approved Flight Training Program.

32 (4) *Aircraft simulator part* means any tangible personal property that is originally designed and
33 intended to be permanently affixed or attached as a component part of an aircraft, and
34 which will also function when it is permanently affixed or attached as a component part of

1 an aircraft simulator.

2 (25) *Airline company* means any operator who engages in the carriage by aircraft of persons or
3 property as a common carrier for compensation or hire, or the carriage of mail, or any
4 aircraft operator who operates regularly between two (2) or more points and publishes a
5 flight schedule. "Airline company" shall not include operators whose aircraft are all certified
6 for a gross takeoff weight of twelve thousand five hundred (12,500) pounds or less and
7 who do not engage in scheduled service or mail carriage service.

8 (36) *Automotive vehicle* means any vehicle or device in, upon or by which any person or
9 property is or may be transported or drawn upon a public highway, or any device used or
10 designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to,
11 motor vehicles, trailers, semi-trailers or mobile homes. Automotive vehicle shall not include
12 devices moved by human power.

13 (47) *Business* shall include all activities engaged in or caused to be engaged in with the object
14 of gain, benefit or advantage, direct or indirect.

15 (58) *Charitable corporation* shall mean a corporation organized and operating exclusively for the
16 purpose of providing a gift for an indefinite number of persons who are either residents of
17 the city or using facilities of the city on a regular basis that lessens the economic burdens
18 of the city by making the gift to the young, aged, poor, infirm or uneducated. Lessening the
19 economic burden of the city by making a gift to the uneducated shall mean providing free
20 instruction or training to a majority of enrollees on subjects useful to the individual and
21 beneficial to the community by schools having a regularly scheduled curriculum, a regular
22 faculty, and a regularly enrolled body of students in attendance at a place where
23 educational activities are regularly carried on. This definition of charitable corporation shall
24 not necessarily include religious corporations, which may be exempt on a religious basis
25 whether or not they fall within the definition of a charitable corporation.

26 ~~(6) *Reserved.*~~

27 (79) *Construction and building materials* means tangible personal property which, when
28 combined with other tangible property, loses its identity to become an integral and
29 inseparable part of a structure or project, and the term includes public and private
30 improvements to real property. Construction and building materials include, but are not
31 limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement,
32 concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and
33 cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam,

1 millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures,
2 putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site
3 lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board,
4 wall coping, wall paper, weather stripping, wire netting and screen, water mains and
5 meters, and wood preserver. The above materials, when used for forms, or other items
6 which do not remain as an integral or inseparable part of a structure or project are not
7 construction materials.

8 ~~(8) Reserved.~~

9 (910) *Farm machinery* means self-propelled or power-drawn equipment used directly for plowing,
10 planting, cultivating and harvesting of crops, such as combines, tractors, plows, discs,
11 planters and rakes.

12 ~~(4011)~~ *Food* shall mean:

- 13 a. Food for domestic, home or household use as the manager may by regulation
14 define which is advertised or marketed for human consumption and is sold in the
15 same form, condition, quantities and packaging as is commonly sold by grocers.
- 16 b. Food as defined in Section 2012(g) of Title 7 of the United States Code as of, and
17 as it may be amended after, October 1, 1987, that is eligible for purchase by the
18 medium of exchange commonly known as "food stamps," and the sale of food as
19 defined in or pursuant to Section 1786 of Title 42 of the United States Code as of,
20 and as it may be amended after, October 1, 1987, that is eligible for purchase with
21 vouchers, checks or similar certificates of exchange for the "special supplemental
22 food program" for women, infants, and children.
- 23 c. Notwithstanding the definition of food referred to in paragraph b of this subsection,
24 the term "food" shall not include food or drink served or furnished as described in
25 section 53-25(5) of this article; neither shall it include carbonated water sold in
26 containers, chewing gum, spirituous, malt or vinous liquors, seeds and plants to
27 grow foods, prepared salads, salad bars, cold sandwiches, and deli trays unless any
28 of those items, excepting spirituous, malt or vinous liquors, is actually purchased
29 with food stamps or vouchers as they are described in paragraph b of this
30 subsection; nor shall the term "food" as used in this subsection include food and
31 drink vended by or through machines.

32 (4412) *Gross taxable sales* means the total amount received in money, credits, property, including
33 the fair market value of exchange property which is to be sold thereafter in the usual

1 course of the retailer's business, or other consideration valued in money from sales and
2 purchases at retail or deemed to be at retail, within the city, and embraced within the
3 provisions of this article:

- 4 a. Provided, however, that the vendor may take credit in his report of gross sales for an
5 amount equal to the sale price of property returned by the purchaser when the full
6 sale price thereof is refunded, either in cash or by credit;
- 7 b. Provided, further, that the fair market value of any exchanged property which is to
8 be sold thereafter in the usual course of the retailer's business, if included in the full
9 price of a new article, shall be excluded from gross taxable sales;
- 10 c. Provided, further, that taxes paid on the amount of gross sales which are
11 represented by accounts not secured by a conditional sale contract or chattel
12 mortgage and which are found to be worthless and are actually and properly
13 charged off as bad debts for the purpose of the income tax imposed by the laws of
14 the state may be credited upon a subsequent payment of the tax herein provided;
15 but if any such accounts are thereafter collected by the vendor, a tax shall be paid
16 upon the amount so collected. Such credit shall not be allowed with respect to any
17 account or item therein arising either from the sale of any article under a conditional
18 sale contract whereby the vendor retains title as security for all or part of the
19 purchase price or from the sale of any article when the vendor takes a chattel
20 mortgage on the article to secure all or part of the purchase price.

21 (~~42~~13) *Manufacturing* is the performance as a business of an integrated series of operations
22 which places personal property in a form, composition or character different from that in
23 which it was acquired whether for sale or for use by the manufacturer. The change in form,
24 composition or character must result in a different product having a distinctive name,
25 character and use.

26 (~~43~~14) *Medical supplies* shall mean drugs, prosthetic devices, and special beds for patients with
27 neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a
28 specific individual in accordance with a prescription or other written directive issued by a
29 licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses
30 (including eyeglass frames), and corrective contact lenses, when sold for the direct,
31 personal use of a specific individual in accordance with a prescription or other written
32 directive issued by a licensed practitioner of medicine or optometry; wheelchairs, and
33 crutches, when sold for the direct, personal use of a specific individual; oxygen and

1 hemodialysis products for use by a medical patient, hearing aids, hearing aid batteries,
2 insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin
3 reactions, and human whole blood, plasma, blood products and derivatives. This
4 exemption excludes items purchased for use by medical and dental practitioners or
5 medical facilities in providing their services, even though certain of those items may be
6 packaged for single use by individual patients after which the item would be discarded.

7 ~~(4415)~~ *Motor fuel* shall mean gasoline, casing head or natural gasoline, benzol, benzene and
8 naphtha, gasohol and any liquid prepared, advertised, offered for sale, sold for use or used
9 or commercially usable in internal combustion engines for the generation of power for the
10 propulsion of motor vehicles upon the public highways. The term does not include fuel
11 used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives,
12 however.

13 ~~(4516)~~ *Pay television* shall include, but not be limited to, cable, microwave or other television
14 service for which a charge is imposed.

15 ~~(4617)~~ *Prepress preparation material* means all materials used by those in the printing industry
16 including, but not limited to, airbrush color photos, color keys, dies, engravings, light-
17 sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials,
18 tape, transparencies, and veloxes, which are used by printers in the preparation of
19 customer specific layouts or in plates used to fill customers' printing orders, which are
20 eventually sold to a customer, either in their original purchase form or in an altered form,
21 and for which a sales or use tax is demonstrably collected from the printer's customer, if
22 applicable, either separately from the printed materials or as part of the inclusive price
23 therefor. Materials sold to a printer which are used by the printer for the printer's own
24 purposes, and are not sold, either directly or in an altered form, to a customer, are not
25 included within this definition.

26 ~~(4718)~~ *Prosthetic devices* means any artificial limb, part, device or appliance for human use which
27 aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a
28 particular individual; and is prescribed by a licensed practitioner of the healing arts.
29 Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular,
30 cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with
31 related accessories.

32 ~~(4819)~~ *Purchase price or price* means the aggregate value measured in currency paid or delivered
33 or promised to be paid or delivered in consummation of a sale, without any discount from

1 the price on account of the cost of the property sold, cost of materials used, labor or
2 service cost, transportation and delivery charges, or any other expense whatsoever; and
3 provided that when articles of tangible personal property are sold by the manufacturer after
4 manufacture or after having been made to order, the gross value of all materials, labor and
5 services, inclusive of the profit thereon, shall be included in the purchase price; but said
6 price shall be exclusive of any direct tax imposed by the federal government, by the state
7 or by this article; and in the case of all retail sales involving the exchange of property, also
8 exclusive of the fair market value of the property exchanged at the time and place of
9 exchange; provided, however, that such exchanged property is to be sold thereafter in the
10 usual course of the retailer's business. "Price" and "purchase price" shall not include the
11 following:

- 12 a. The consideration received for labor or services used in installing, applying,
13 remodeling or repairing the property sold if the consideration for such services is
14 separately stated from the consideration received for the tangible personal property
15 in the retail sale;
- 16 b. The amount paid by any purchaser as, or in the nature of, interest or finance
17 charges on account of credit extended in connection with the sale of any tangible
18 personal property if the interest or finance charges are separately stated from the
19 consideration received for the tangible personal property transferred in the retail
20 sale.

21 (20) *Rail carrier* means "rail carrier" as defined in Section 10102 of Title 49 of the United States
22 Code as of October 10, 2013, and as it may be amended hereafter.

23 (21) *Rail carrier part* means any tangible personal property that is originally designed and
24 intended to be permanently affixed or attached as a component part of a locomotive or rail
25 car used by a rail carrier.

26 (4922) *Retail sale* means any sale within the city except a wholesale sale.

27 (2023) *Retailer or vendor* means any person selling, leasing, renting or granting a license to use
28 tangible personal property or services at retail. Retailer or vendor shall include, but is not
29 limited to, any:

- 30 a. Auctioneer;
- 31 b. Salesman, representative, peddler or canvasser, who as agent, directly or indirectly,
32 of the dealer, distributor, supervisor, employer or principal under whom he operates
33 or from whom he obtains the tangible personal property or services sold by such

1 agent, makes sales of tangible personal property or services subject to the tax
2 imposed herein; and in such event such agent shall be responsible for the collection
3 and payment of the tax imposed by this article whenever the principal of such agent
4 neglects or refuses to become licensed as a vendor hereunder.

- 5 c. Charitable organization or governmental entity which makes sales of tangible
6 personal property to the public, notwithstanding the fact that the merchandise sold
7 may have been acquired by gift or donation or that the proceeds are to be used for
8 charitable or governmental purposes.

9 ~~(2124)~~ *Sale or purchase or sale and purchase* includes installment and credit purchases and sales
10 and the exchange of property or services that are taxable under the terms of this article as
11 well as the purchase and sale thereof for money; and every transaction, conditional or
12 otherwise, based upon consideration constitutes a sale. The term "sale," "purchase," or
13 "sale and purchase" includes transactions whereby the acquisition of tangible personal
14 property was effected by (a) the transfer, conditionally or absolutely, of title or possession
15 or both of the tangible personal property; or (b) a lease, hire or rental of, or a grant of a
16 license to use (including royalty agreements), tangible personal property. The terms "sale"
17 and "purchase" and "sale and purchase" do not include:

- 18 a. A division of partnership assets among the partners according to their interests in
19 the partnership;
- 20 b. The transfer of assets of shareholders in the formation or dissolution of professional
21 corporations if no consideration including, but not limited to, the assumption of a
22 liability is paid for the transfer of assets;
- 23 c. The pro rata distribution of a corporation's assets to its stockholders upon
24 dissolution of the corporation if no consideration including, but not limited to, the
25 assumption of a liability is paid for the transfer of assets;
- 26 d. A transfer of a partnership interest;
- 27 e. The transfer of assets to a commencing or existing partnership if no consideration
28 including, but not limited to, the assumption of a liability is paid for the transfer of
29 assets;
- 30 f. The repossession of personal property by a chattel mortgage holder or foreclosure
31 by a lienholder.

32 ~~(2225)~~ *Special fuel* means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum
33 gases, and all combustible gases and liquids for use in the generation of power for

1 propulsion of motor vehicles upon the public highways. The term does not include fuel
2 used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives,
3 however.

4 ~~(2326)~~ *Tangible personal property* means corporeal personal property.

5 ~~(2427)~~ *Tax* means either the tax payable by the purchaser of a commodity or service subject to tax
6 or the aggregate amount of taxes due from the vendor of such commodities or services
7 during the period for which the vendor is required to report his collections, as the context
8 may require.

9 ~~(2528)~~ *Tax deficiency or deficiency* means any amount of tax, penalty or interest that is not
10 reported, returned or paid on or before the date that the return and payment of the tax are
11 required under the terms of this article.

12 ~~(2629)~~ *Taxable services or services* means services subject to tax pursuant to this article.

13 ~~(27)~~ *Reserved.*

14 ~~(2830)~~ *Telecommunications service* means the transmission of any two-way interactive
15 electromagnetic communications including, but not limited to, voice, image, data and any
16 other information, by the use of any means but not limited to wire, cable, fiber optical cable,
17 microwave, radio wave or any combinations of such media. "Telecommunications service"
18 includes, but is not limited to, basic local exchange telephone service, toll telephone
19 service and teletypewriter service, including, but not limited to, residential and business
20 service, directory assistance, cellular mobile telephone or telecommunication service,
21 specialized mobile radio and two-way pagers and paging service, including any form of
22 mobile two-way communication. "Telecommunications service" does not include separately
23 stated nontransmission services which constitute computer processing applications used to
24 act on the information to be transmitted.

25 ~~(2931)~~ *Wholesale sale* means:

26 a. A sale by wholesalers to licensed retail merchants, jobbers, dealers or other
27 wholesalers for resale, and does not include (i) a sale by wholesalers to users or
28 consumers not for resale; (ii) the leasing, hiring or renting of, or granting of a license
29 to use (including royalty agreements) tangible personal property to a user or
30 consumer thereof; (iii) sales of returnable containers to manufacturers,
31 compounders, wholesalers, retailers, jobbers, packagers, distributors or bottlers; (iv)
32 sales of tangible personal property to persons for resale when there is a likelihood
33 that the city will otherwise lose tax revenues due to the difficulty of policing the

1 business operations because:

- 2 1. of the frequent replacement of independent contractors or agents;
- 3 2. of the lack of a place of business in which to display a city retail sales license;
- 4 3. of the lack of a place of business in which to keep records;
- 5 4. of the lack of adequate records;
- 6 5. the persons engaged in selling, or in the chain of selling events, are minors or
- 7 transients; or
- 8 6. he persons selling, or in the chain of events leading to sale, are engaged
- 9 essentially in providing services in transferring tangible personal property;

10 but the transactions set forth in items (i), (ii), (iii) and (iv) above shall be deemed retail sales
11 and subject to the provisions of this article;

12 b. Sales to and purchases of tangible personal property by a person engaged in the
13 business of manufacturing or compounding for use, profit or sale, which tangible
14 personal property meets all of the following conditions: (i) is actually and factually
15 transformed by the process of manufacture; (ii) becomes by the manufacturing or
16 compounding process a necessary and recognizable ingredient, component and
17 constituent part of the finished product; and (iii) its physical presence in the finished
18 product is essential to the use thereof in the hands of the ultimate consumer; shall
19 be deemed wholesale sales and shall be deemed exempt from taxation under this
20 article; and

21 c. Sales to and purchases of tangible personal property for use as containers, labels
22 and shipping cases by a person engaged in manufacturing, compounding,
23 wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or
24 use, which tangible personal property meets all of the following conditions: (i) is
25 used by the manufacturer, compounder, wholesaler, jobber, retailer, packager,
26 distributor or bottler to contain or label the finished product; (ii) is transferred by said
27 person along with and as a part of the finished product to the purchaser; and (iii) is
28 not returnable to said person for reuse, shall be deemed wholesale sales and shall
29 be exempt from taxation under this article.

30 Provided, however, that skin casing or cellulose casing or sales of and purchases of edible
31 fryer oil used as a cooking medium which enters into the processing of food products
32 intended to be sold at retail for human consumption shall be exempt from taxation when
33 such skin casing or cellulose casing or edible fryer oil used as a cooking medium, which

1 does not become an integral or constituent part of a food product, is directly used,
2 consumed, dissipated or destroyed to the extent that it is rendered unfit for further use in
3 the processing of a food product.

4 (3032) *Wholesaler* means a person doing a regularly organized wholesale or jobbing business
5 and selling to licensed retailers, merchants, jobbers, dealers or other wholesalers, for the
6 purpose of resale.

7 **Section 2.** That section 53-26.2 of the Revised Municipal Code be and is enacted to read
8 as follows:

9 **Sec. 53-26.2. Exemption for Aircraft Parts, Aircraft Simulator Parts, and Rail Carrier Parts.**

10 Sales of aircraft parts, aircraft simulator parts, and rail carrier parts shall be exempt from
11 taxation under this article. This exemption shall be phased-in as follows:

- 12 a. For the period commencing January 1, 2014, and concluding on December 31,
13 2014, fifty percent (50%) of the purchase price paid or charged upon all sales of
14 aircraft parts, aircraft simulator parts, and rail carrier parts shall be exempt from the
15 tax imposed by this article. If the total amount of tax that a purchaser pays for
16 aircraft parts, aircraft simulator parts, and rail carrier parts under this article for
17 purchases made in calendar year 2014 exceeds fifty percent (50%) of the total
18 amount of the tax that was due under this article for purchases of aircraft parts,
19 aircraft simulator parts, and rail carrier parts made in calendar year 2013, the
20 purchaser may apply to the Manager for a refund or credit of the excess amount no
21 later than February 28, 2015.
- 22 b. On or after January 1, 2015, sales of aircraft parts, aircraft simulator parts, and rail
23 carrier parts shall be exempt from taxation under this article.

24 This section shall be repealed, effective December 31, 2040.

25 **Section 3.** That section 53-29 of the Revised Municipal Code be and is hereby amended
26 by adding the underlined language and deleting the stricken language to read and be read as
27 follows:

28 **Sec. 53-95. Definitions.**

29 As used in this article the following words, phrases and, where applicable, their
30 declensional and inflectional forms shall have the meanings given to them in this section except
31 where the context in which they are used indicates clearly and requires a different meaning
32 according to customary usage. The words "shall" and "must" are to be construed as mandatory
33 and not directory. In addition to the following definitions, the definitions and general provisions of

chapter 1 shall be applicable insofar as not expressly inconsistent with the provisions hereof.

(1) *Aircraft* means any contrivance now known or hereafter invented, used, or designed for navigation or flight through the air and designed to carry at least one person. "Aircraft" shall not include aircraft parts; ~~"aircraft parts" include, but are not limited to expendable aircraft parts and rotatable aircraft parts.~~

(2) *Aircraft part* means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

(3) *Aircraft simulator* means a Flight Simulator Training Device (FSTD) as defined in Part I of Title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of Title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.

(4) *Aircraft simulator part* means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.

(25) *Airline company* means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two (2) or more points and publishes a flight schedule. "Airline company" shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred (12,500) pounds or less and who do not engage in scheduled service or mail carriage service.

(36) *Automotive vehicle* means any vehicle or device in, upon or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers or mobile homes. Automotive vehicle shall not include devices moved by human power.

(47) *Business* shall include all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect.

(58) *Charitable corporation* shall mean a corporation organized and operating exclusively for the purpose of providing a gift for an indefinite number of persons who are either residents of the city or using facilities of the city on a regular basis that lessens the economic burdens of the city by making the gift to the young, aged, poor, infirm or uneducated. Lessening the economic burden of the city by making a gift to the uneducated shall mean providing free

1 instruction or training to a majority of enrollees on subjects useful to the individual and
2 beneficial to the community by schools having a regularly scheduled curriculum, a regular
3 faculty and a regularly enrolled body of students in attendance at a place where
4 educational activities are regularly carried on. This definition of charitable corporation shall
5 not necessarily include religious corporations, which may be exempt on a religious basis
6 whether or not they fall within the definition of a charitable corporation.

7 ~~(6) Reserved.~~

8 (79) *Construction and building materials* means tangible personal property which, when
9 combined with other tangible personal property, loses its identity to become an integral and
10 inseparable part of a structure or project, and the term includes public and private
11 improvements to real property. Construction and building materials include, but are not
12 limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement,
13 concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and
14 cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam,
15 millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures,
16 putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site
17 lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board,
18 wall coping, wall paper, weather stripping, wire netting and screen, water mains and
19 meters, and wood preserver. The above materials, when used for forms, or other items
20 which do not remain as an integral or inseparable part of a structure or project are not
21 construction materials.

22 ~~(8) Reserved.~~

23 (910) *Engaged in business* in the city means the selling, leasing or delivering in the city, or any
24 activity in the city in connection with the selling, leasing or delivering in the city of tangible
25 personal property by a retail sale for use, storage, distribution or consumption within the
26 city. This term shall include, but shall not be limited to, the following acts or methods of
27 transacting business:

- 28 a. The maintaining within the city directly or indirectly or by a subsidiary of an office,
29 distributing house, sales room or house, warehouse or other place of business.
- 30 b. The soliciting, either by direct representatives, indirect representatives,
31 manufacturer's agent, or by distribution of catalogues or other advertising, or by use
32 of any communication media, or by use of the newspaper, radio or television
33 advertising media, or by any other means whatsoever of business from persons

1 residing in the city and by reason thereof receiving orders from such persons
2 residing in the city for purchasing, or hiring tangible personal property or taxable
3 services for use, consumption, distribution or storage in the city; and the tangible
4 personal property or services so ordered, purchased or leased actually comes to
5 rest or is used for any length of time in the city and, in the case of tangible personal
6 property, becomes a part of the mass of property in the city as a result thereof.

7 ~~(4011)~~*Farm machinery* means self-propelled or power-drawn equipment used directly for plowing,
8 planting, cultivating and harvesting of crops, such as combines, tractors, plows, discs,
9 planters and rakes.

10 ~~(4412)~~*Food* shall mean:

- 11 a. Food for domestic, home or household use as the manager may by regulation
12 define which is advertised or marketed for human consumption and is sold in the
13 same form, condition, quantities and packaging as is commonly sold by grocers.
- 14 b. Food as defined in Section 2012(g) of Title 7 of the United States Code as of, and
15 as it may be amended after, October 1, 1987, that is eligible for purchase by the
16 medium of exchange commonly known as "food stamps," and the sale of food as
17 defined in or pursuant to Section 1786 of Title 42 of the United States Code as of,
18 and as it may be amended after, October 1, 1987, that is eligible for purchase with
19 vouchers, checks or similar certificates of exchange for the "special supplemental
20 food program" for women, infants and children.
- 21 c. Notwithstanding the definition of food referred to in paragraph b of this subsection,
22 the term "food" shall not include food or drink served or furnished as described in
23 section 53-25(5) of this article; neither shall it include carbonated water sold in
24 containers, chewing gum, spirituous, malt or vinous liquors, seeds and plants to
25 grow foods, prepared salads, salad bars, cold sandwiches and deli trays unless any
26 of those items, excepting spirituous, malt or vinous liquors, is actually purchased
27 with food stamps or vouchers as they are described in paragraph b of this
28 subsection; nor shall the term "food" as used in this subsection include food and
29 drink vended by or through machines.

30 ~~(4213)~~*Gross taxable sales* means the total amount received in money, credits, property, including
31 the fair market value of exchange property which is to be sold thereafter in the usual
32 course of the retailer's business, or other consideration valued in money from sales and
33 purchases at retail or deemed to be at retail, within the city and embraced within the

1 provisions of this article:

- 2 a. Provided, however, that the vendor may take credit in his report of gross sales for an
3 amount equal to the sale price of property returned by the purchaser when the full
4 sale price thereof is refunded, either in case or by credit;
- 5 b. Provided, further, that the fair market value of any exchanged property which is to
6 be sold thereafter in the usual course of the retailer's business, if included in the full
7 price of a new article, shall be excluded from gross taxable sales;
- 8 c. Provided, further, that taxes paid on the amount of gross sales which are
9 represented by accounts not secured by conditional sale contract or chattel
10 mortgage and which are found to be worthless and are actually and properly
11 charged off as bad debts for the purpose of the income tax imposed by the laws of
12 the state may be credited upon a subsequent payment of the tax herein provided;
13 but if any such accounts are thereafter collected by the vendor, a tax shall be paid
14 upon the amount so collected. Such credit shall not be allowed with respect to any
15 account or item therein arising either from the sale of any article under a conditional
16 sale contract whereby the vendor retains title as security for all or part of the
17 purchase price or from the sale of any article when the vendor takes a chattel
18 mortgage on the article to secure all or part of the purchase price.

19 ~~(4314)~~ *Manufacturing* is the performance as a business of an integrated series of operations
20 which places personal property in a form, composition or character different from that in
21 which it was acquired, whether for sale or for use by the manufacturer. The change in form,
22 composition or character must result in a different product having a distinctive name,
23 character and use.

24 ~~(4415)~~ *Medical supplies* shall mean drugs, prosthetic devices and special beds for patients with
25 neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a
26 specific individual in accordance with a prescription or other written directive issued by a
27 licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses
28 (including eyeglass frames) and corrective contact lenses, when sold for the direct,
29 personal use of a specific individual in accordance with a prescription or other written
30 directive issued by a licensed practitioner of medicine or optometry; wheelchairs, and
31 crutches, when sold for the direct, personal use of a specific individual; oxygen and
32 hemodialysis products for use by a medical patient, hearing aids, hearing aid batteries,
33 insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin

1 reactions, and human whole blood, plasma, blood products and derivatives. This
2 exemption excludes items purchased for use by medical and dental practitioners or
3 medical facilities in providing their services, even though certain of those items may be
4 packaged for single use by individual patients after which the item would be discarded.

5 ~~(4516)~~ *Motor fuel* means gasoline, casing head or natural gasoline, benzol, benzene and naphtha,
6 gasohol, and any liquid prepared, advertised, offered for sale, sold for use or used or
7 commercially usable in internal combustion engines for the generation of power for the
8 propulsion of motor vehicles upon the public highways. The term does not include fuel
9 used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives,
10 however.

11 ~~(4617)~~ *Pay television* shall include, but not be limited to, cable microwave or other television
12 service for which a charge is imposed.

13 ~~(4718)~~ *Prepress preparation material* means all materials used by those in the printing industry
14 including, but not limited to, airbrush color photos, color keys, dies, engravings, light-
15 sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials,
16 tape, transparencies, and veloxes, which are used by printers in the preparation of
17 customer specific layouts or in plates used to fill customers' printing orders, which are
18 eventually sold to a customer, either in their original purchase form or in an altered form,
19 and for which a sales or use tax is demonstrably collected from the printer's customer, if
20 applicable, either separately from the printed materials or as part of the inclusive price
21 therefor. Materials sold to a printer which are used by the printer for the printer's own
22 purposes, and are not sold, either directly or in an altered form, to a customer, are not
23 included within this definition.

24 ~~(4819)~~ *Prosthetic devices* means any artificial limb, part, device or appliance for human use which
25 aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a
26 particular individual; and is prescribed by a licensed practitioner of the healing arts.
27 Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular,
28 cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with
29 related accessories.

30 ~~(4920)~~ *Purchase price or price* means the aggregate value measured in currency paid or delivered
31 or promised to be paid or delivered in consummation of a sale, without any discount from
32 the price on account of the cost of the property sold, cost of materials used, labor or
33 service cost, transportation or delivery charges, or any other expense whatsoever; and

1 provided that when articles of tangible personal property are sold by the manufacturer after
2 manufacture or after having been made to order, the gross value of all materials, labor and
3 services, inclusive of the profit thereon, shall be included in the purchase price; but said
4 price shall be exclusive of any direct tax imposed by the federal government, by the state
5 or by this article; and in the case of all retail sales involving the exchange of property, also
6 exclusive of the fair market value of the property exchanged at the time and place of
7 exchange; provided, however, that such exchanged property is to be sold thereafter in the
8 usual course of the retailer's business. "Price" and "purchase price" shall not include the
9 following:

- 10 a. The consideration received for labor or services used in installing, applying,
11 remodeling or repairing the property sold if the consideration for such services is
12 separately stated from the consideration received for the tangible personal property
13 in the retail sale;
- 14 b. The amount paid by any purchaser as, or in the nature of, interest or finance
15 charges on account of credit extended in connection with the sale of any tangible
16 personal property if the interest or finance charges are separately stated from the
17 consideration received for the tangible personal property transferred in the retail
18 sale.

19 When tangible personal property is first distributed, stored, used or consumed in the city
20 more than one (1) year after its retail sale, "purchase price" and "price" shall mean market
21 value in the city and its environs.

22 ~~(2021)~~*Purchaser* shall mean any person to whom a taxable service has been rendered or who
23 shall have purchased or hired at retail tangible personal property.

24 ~~(22)~~ *Rail carrier* means "rail carrier" as defined in Section 10102 of Title 49 of the United States
25 Code as of October 10, 2013, and as it may be amended hereafter.

26 ~~(23)~~ *Rail carrier part* means any tangible personal property that is originally designed and
27 intended to be permanently affixed or attached as a component part of a locomotive or rail
28 car used by a rail carrier.

29 ~~(2124)~~*Retail sale* means any sale, as defined in this section, except a wholesale sale.

30 ~~(2225)~~*Retailer or vendor* means any person selling, leasing, renting or granting a license to use
31 tangible personal property or services at retail. Retailer or vendor shall include, but is not
32 limited to, any:

- 33 a. Auctioneer;

1 b. Salesman, representative, peddler or canvasser, who as agent, directly or indirectly,
2 of the dealer, distributor, supervisor, employer or principal under whom he operates
3 or from whom he obtains the tangible personal property or services sold by such
4 agent, makes sales of tangible personal property or services subject to the tax
5 imposed herein; and in such event such agent shall be responsible for the collection
6 and payment of the tax imposed by this article whenever the principal of such agent
7 neglects or refuses to become licensed as a vendor hereunder.

8 c. Charitable organization or governmental entity which makes sales of tangible
9 personal property to the public, notwithstanding the fact that the merchandise sold
10 may have been acquired by gift or donation or that the proceeds are to be used for
11 charitable or governmental purposes.

12 ~~(2326)~~ *Sale or purchase or sale and purchase* includes installment and credit purchases and sales
13 and the exchange of property or services that are taxable under the terms of this article as
14 well as the purchase and sale thereof for money; and every transaction conditional or
15 otherwise, based upon consideration constitutes a sale. The term "sale," "purchase," or
16 "sale and purchase" includes transactions whereby the acquisition of tangible personal
17 property was effected by (a) the transfer, conditionally or absolutely, of title or possession
18 or both of the tangible personal property; or (b) a lease, hire or rental of, or a grant of a
19 license to use (including royalty agreements) tangible personal property. The terms "sale"
20 and "purchase" and "sale and purchase" do not include:

21 a. A division of partnership assets among the partners according to their interests in
22 the partnership;

23 b. The transfer of assets of shareholders in the formation or dissolution of professional
24 corporations if no consideration including, but not limited to, the assumption of a
25 liability is paid for the transfer of assets;

26 c. The pro rata distribution of a corporation's assets to its stockholders upon
27 dissolution of the corporation if no consideration including, but not limited to, the
28 assumption of a liability is paid for the transfer of assets;

29 d. A transfer of a partnership interest;

30 e. The transfer of assets to a commencing or existing partnership if no consideration
31 including, but not limited to, the assumption of a liability is paid for the transfer of
32 assets;

33 f. The repossession of personal property by a chattel mortgage holder or foreclosure

1 by a lienholder.

2 (~~2427~~) *Special fuel* means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum
3 gases: and all combustible gases and liquids for use in the generation of power for
4 propulsion of motor vehicles upon the public highways. The term does not include fuel
5 used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives,
6 however.

7 (~~2528~~) *Storage* means any keeping or retention of, or exercise of dominion or control over, or
8 possession for any length of time of tangible personal property under a lease or when
9 purchased at retail within or without the city.

10 (~~2629~~) *Tangible personal property* means corporeal personal property.

11 (~~2730~~) *Tax* means either the tax payable by the user, consumer, distributor, storekeeper or
12 purchaser of tangible personal property or of a service subject to the tax imposed by this
13 article, or the aggregate amount of taxes due from the vendor of such commodities or
14 services during the period for which the vendor is required by this article to report his
15 collections, as the context may require.

16 (~~2831~~) *Tax deficiency or deficiency* means any amount of tax, penalty or interest that is not
17 reported, returned or paid on or before the date that the return and payment of the tax are
18 required under the terms of this article.

19 (~~2932~~) *Taxable services or services* means services subject to tax pursuant to this article.

20 (~~30~~) ~~Reserved.~~

21 (~~3133~~) *Telecommunications service* means the transmission of any two-way interactive
22 electromagnetic communications including, but not limited to, voice, image, data and any
23 other information, by the use of any means but not limited to wire, cable, fiber optical cable,
24 microwave, radio wave or any combinations of such media. "Telecommunications service"
25 includes, but is not limited to, basic local exchange telephone service, toll telephone
26 service and teletypewriter service, including, but not limited to, residential and business
27 service, directory assistance, cellular mobile telephone or telecommunication service,
28 specialized mobile radio and two-way pagers and paging service, including any form of
29 mobile two-way communication. "Telecommunications service" does not include separately
30 stated nontransmission services which constitute computer processing applications used to
31 act on the information to be transmitted.

32 (~~3234~~) *Use* means the exercise, for any length of time, by any person within the city of any right,
33 power or dominion over tangible personal property or services either under a lease, or

1 pursuant to a transaction whereby tangible personal property together with the services of
2 an operator thereof, is furnished for another person, irrespective of the fact that during all
3 times that the said property is so furnished, the control of the operation of the same
4 remains in the person so providing the said property, or pursuant to a purchase at retail
5 either within or without the city.

6 (~~3335~~) *Wholesale sale* means:

7 a. A sale by wholesalers to licensed retail merchants, jobbers, dealers or other
8 wholesalers for resale, and does not include (i) a sale by wholesalers to users or
9 consumers not for resale; (ii) the leasing, hiring or renting of, or granting of a license
10 to use (including royalty agreements) tangible personal property to a user or
11 consumer thereof; (iii) sales of returnable containers to manufacturers,
12 compounders, wholesalers, retailers, jobbers, packagers, distributors or bottlers; (iv)
13 sales of tangible personal property to persons for resale when there is a likelihood
14 that the city will otherwise lose tax revenues due to the difficulty of policing the
15 business operations because:

- 16 1. of the frequent replacement of independent contractors or agents;
- 17 2. of the lack of a place of business in which to display a city retail sales license;
- 18 3. of the lack of a place of business in which to keep records;
- 19 4. of the lack of adequate records;
- 20 5. the persons engaged in selling, or in the chain of selling events, are minors or
21 transients; or
- 22 6. the persons selling, or in the chain of events leading to sale, are engaged
23 essentially in providing services in transferring tangible personal property;

24 but the transactions set forth in items (i), (ii), (iii) and (iv) above shall be deemed retail sales
25 and subject to the provisions of this article.

26 b. Sales to and purchases of tangible personal property by a person engaged in the
27 business of manufacturing or compounding for use, profit or sale shall be deemed
28 wholesale sales and shall be deemed exempt from taxation under this article if said
29 tangible personal property meets all of the following conditions: (i) it is actually and
30 factually transformed by the process of manufacture; (ii) it becomes by the
31 manufacturing or compounding process a necessary and recognizable ingredient,
32 component and constituent part of the finished product; and (iii) its physical
33 presence in the finished product is essential to the use thereof in the hands of the

1 ultimate consumer.

- 2 c. Sales to and purchases of tangible personal property for use as containers, labels
3 and shipping cases by a person engaged in manufacturing, compounding,
4 wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or
5 use, which tangible personal property meets all of the following conditions: (i) is
6 used by the manufacturer, compounder, wholesaler, jobber, retailer, packager,
7 distributor or bottler to contain or label the finished product; (ii) is transferred by said
8 person along with and as a part of the finished product to the purchaser; and (iii) is
9 not returnable to said person for reuse, shall be deemed wholesale sales and shall
10 be exempt from taxation under this article.

11 Provided, however, that skin casing or cellulose casing or sales of and purchases of edible
12 fryer oil used as a cooking medium which enters into the processing of food products
13 intended to be sold at retail for human consumption shall be exempt from taxation when
14 such skin casing or cellulose casing or edible fryer oil used as a cooking medium, which
15 does not become an integral or constituent part of a food product, is directly used,
16 consumed, dissipated or destroyed to the extent that it is rendered unfit for further use in
17 the processing of a food product.

18 (3436) *Wholesaler* means a person doing a regularly organized wholesale or jobbing business
19 and known to the trade as such and selling to licensed retailers, merchants, jobbers,
20 dealers or other wholesalers for the purpose of resale.

21 **Section 4.** That section 53-97.2 of the Revised Municipal Code be and is enacted to read
22 as follows:

23 **Sec. 53-97.2. Exemption for Aircraft Parts, Aircraft Simulator Parts, and Rail Carrier Parts.**

24 Sales of aircraft parts, aircraft simulator parts, and rail carrier parts shall be exempt from
25 taxation under this article. This exemption shall be phased-in as follows:

- 26 a. For the period commencing January 1, 2014, and concluding on December 31,
27 2014, fifty percent (50%) of the purchase price paid or charged upon all sales of
28 aircraft parts, aircraft simulator parts, and rail carrier parts shall be exempt from the
29 tax imposed by this article. If the total amount of tax that a purchaser pays for
30 aircraft parts, aircraft simulator parts, and rail carrier parts under this article for
31 purchases made in calendar year 2014 exceeds fifty percent (50%) of the total
32 amount of tax that was due under this article for purchases of aircraft parts, aircraft
33 simulator parts, and rail carrier parts made in calendar year 2013, the purchaser

1 may apply to the Manager for a refund or credit of the excess amount no later than
2 February 28, 2015.

3 b. On or after January 1, 2015, sales of aircraft parts, aircraft simulator parts, and rail
4 carrier parts shall be exempt from taxation under this article.

5 This section shall be repealed, effective December 31, 2040.

6 COMMITTEE CONSENT APPROVAL DATE: October 9, 2013

7 MAYOR-COUNCIL DATE: October 15, 2013

8 PASSED BY THE COUNCIL: _____, 2013

9 _____ - PRESIDENT

10 APPROVED: _____ - MAYOR _____, 2013

11 ATTEST: _____ - CLERK AND RECORDER,
12 EX-OFFICIO CLERK OF THE
13 CITY AND COUNTY OF DENVER

14 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

15 PREPARED BY: Charles T. Solomon, Assistant City Attorney Date: October 17, 2013

16 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
17 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
18 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
19 § 3.2.6 of the Charter.

20 Douglas J. Friednash, City Attorney

21 BY: _____, Assistant City Attorney Date: October 17, 2013