

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2017

COUNCIL BILL NO. CB17-0528
COMMITTEE OF REFERENCE:
Finance & Governance

4
5 **A BILL**

6
7 **For an ordinance amending the definitions in Articles I, II, and III of Chapter 53**
8 **(Taxation and Miscellaneous Revenue) of the Denver Revised Municipal Code to**
9 **adopt standardized definitions developed and recommended by the Colorado**
10 **Municipal League.**

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

13 **Section 1.** That section 53-7 of the Denver Revised Municipal Code is hereby amended by
14 adding the underlined language and deleting the stricken language to read and be read as follows:

15 **Sec. 53-7. - Definitions.**

16 The following words and phrases, when used in this chapter, shall have the meanings given
17 to them in this section, except where the context in which they are used indicates clearly and requires
18 a different meaning according to customary usage.

19 (1) “City” means the City and County of Denver or the geographical area within its territorial
20 limits, depending upon the context.

21 (2) “Director of excise and licenses” means the director of excise and licenses for the City
22 and County of Denver.

23 (3) “Manager” means the manager of finance for the City and County of Denver or the
24 manager of finance's designee.

25 (4) ~~Person means any natural person, corporation, partnership, limited liability company,~~
26 ~~association, and other legal entities.~~ “Person” means any individual, firm, partnership, joint venture,
27 corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any
28 person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or
29 any group or combination acting as a unit.

30 (5) “Taxpayer” means any person obligated to ~~account to the manager for taxes collected~~
31 ~~or to be collected, or from whom a tax is due,~~ collect and/or pay tax under the terms of this chapter.

32 **Section 2.** That section 53-21.1 of the Denver Revised Municipal Code is hereby amended
33 by adding the underlined language and deleting the stricken language to read and be read as follows:

1 **Sec. 53-21.1. - Legislative intent.**

2 It is hereby declared to be the legislative intent of the city, acting through its duly elected
3 representatives, that, for purposes of this article, the tax imposed hereunder be reduced by the
4 amount of such tax which the city is prohibited from collecting under the state and federal
5 Constitutions and laws of the United States by reason of a tax legally imposed and paid, in respect
6 to a sale of ~~services or~~ tangible personal property, a product, or a service taxable hereunder, to
7 another state or local, including municipal, government.

8 **Section 3.** That section 53-24 of the Denver Revised Municipal Code is hereby amended by
9 adding the underlined language and deleting the stricken language to read and be read as follows:

10 **Sec. 53-24. - Definitions.**

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

17 ~~(1) *Aircraft* means any contrivance now known or hereafter invented, used, or designed~~
18 ~~for navigation or flight through the air and designed to carry at least one person.~~
19 ~~Aircraft shall not include aircraft parts.~~

20 (1) "Aircraft" means a device that is used or intended to be used for flight in the air and
21 designed to carry at least one person.

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

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

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

- 1 (5) "Airline company" means any operator who engages in the carriage by aircraft of
2 persons or property as a common carrier for compensation or hire, or the carriage of
3 mail, or any aircraft operator who operates regularly between two (2) or more points
4 and publishes a flight schedule. Airline company shall not include operators whose
5 aircraft are all certified for a gross takeoff weight of twelve thousand five hundred
6 (12,500) pounds or less and who do not engage in scheduled service or mail carriage
7 service.
- 8 (6) "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
10 used or designed for aviation or flight in the air. Automotive vehicle includes, but is
11 not limited to, motor vehicles, trailers, semi-trailers or mobile homes. Automotive
12 vehicle shall not include devices moved by human power or used exclusively upon
13 stationary rails or tracks.
- 14 (7) "Business" ~~shall include~~ means all activities engaged in or caused to be engaged in
15 with the object of gain, benefit or advantage, direct or indirect.
- 16 (8) "Charitable corporation" ~~shall means~~ a corporation organized and operating
17 exclusively for the purpose of providing a gift for an indefinite number of persons who
18 are either residents of the city or using facilities of the city on a regular basis that
19 lessens the economic burdens of the city by making the gift to the young, aged, poor,
20 infirm or uneducated. Lessening the economic burden of the city by making a gift to
21 the uneducated shall mean providing free instruction or training to a majority of
22 enrollees on subjects useful to the individual and beneficial to the community by
23 schools having a regularly scheduled curriculum, a regular faculty, and a regularly
24 enrolled body of students in attendance at a place where educational activities are
25 regularly carried on. This definition of charitable corporation shall not necessarily
26 include religious corporations, which may be exempt on a religious basis whether or
27 not they fall within the definition of a charitable corporation.
- 28 (9) "Construction and building materials" means tangible personal property which, when
29 combined with other tangible property, loses its identity to become an integral and
30 inseparable part of a structure or project, ~~and the term includes~~ including public and
31 private improvements, ~~to real property~~. Construction and building materials include,
32 but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking

1 material, cement, concrete, conduit, electric wiring and connections, fireplace inserts,
2 electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead,
3 lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe
4 fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand,
5 sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs
6 and other landscaping materials, wall board, wall coping, wall-paper, weather
7 stripping, wire netting and screen, water mains and meters, and wood preserver. The
8 above materials, when used for forms, or other items which do not remain as an
9 integral or inseparable part of a completed structure or project are not construction
10 materials.

11 (10) "Cover charge" means a charge paid to a club or similar entertainment establishment
12 which may, or may not, entitle the patron paying such charge to receive tangible
13 personal property, such as food and/or beverages.

14 (11) "Digital product" means an electronic product including, but not limited to: (1) "digital
15 images" which means works that include, but are not limited to, the following that are
16 generally recognized in the ordinary and usual sense as "photographs," "logos,"
17 "cartoons," or "drawings," (2) "digital audio-visual works" which means a series of
18 related images which, when shown in succession, impart an impression of motion,
19 together with accompanying sounds, if any, (3) "digital audio works" which means
20 works that result from the fixation of a series of musical, spoken, or other sounds,
21 including ringtones. For purposes of the definition of "digital audio works," "ringtones"
22 means digitized sound files that are downloaded onto a device and that may be used
23 to alert the customer with respect to a communication, and (4) "digital books" which
24 means works that are generally recognized in the ordinary and usual sense as
25 "books."

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

29 (12) "Farm equipment" means any farm tractor, as defined in Section 42-1-102(33),
30 C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and
31 irrigation equipment having a per unit purchase price of at least one thousand dollars
32 (\$1,000.00). Farm equipment also includes, regardless of purchase price,

1 attachments and baling wire, binders twine and surface wrap used primarily and
2 directly in any farm operation. Farm equipment also includes, regardless of purchase
3 price, parts that are used in the repair or maintenance of the farm equipment
4 described in this paragraph, all shipping pallets, crates, or aids paid for by a farm
5 operation, and aircraft designed or adapted to undertake agricultural applications.
6 Farm equipment also includes, regardless of purchase price, dairy equipment. Except
7 for shipping pallets, crates or aids used in the transfer or shipping of agricultural
8 products, Farm equipment does not include: (1) vehicles subject to the registration
9 requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such
10 vehicles are used; (2) machinery, equipment, materials, and supplies used in a
11 manner that is incidental to a farm operation; (3) maintenance and janitorial
12 equipment and supplies; and (4) tangible personal property used in any activity other
13 than farming, such as office equipment and supplies and equipment and supplies
14 used in the sale or distribution of farm products, research, or transportation.

15 (4413) "Food" shall mean:

- 16 a. Food for domestic, home or household use as the manager may by regulation
17 define which is advertised or marketed for human consumption and is sold in
18 the same form, condition, quantities and packaging as is commonly sold by
19 grocers.
- 20 b. Food as defined in Section 2012(g) of Title 7 of the United States Code as of,
21 and as it may be amended after, October 1, 1987, that is eligible for purchase
22 by the medium of exchange commonly known as 'food stamps,' and the sale
23 of food as defined in or pursuant to Section 1786 of Title 42 of the United
24 States Code as of, and as it may be amended after, October 1, 1987, that is
25 eligible for purchase with vouchers, checks or similar certificates of exchange
26 for the 'special supplemental food program' for women, infants, and children.
- 27 c. Notwithstanding the definition of food referred to in paragraph b of this
28 subsection, the term 'food' shall not include food or drink served or furnished
29 as described in subsection 53-25(5) of this article; neither shall it include
30 carbonated water sold in containers, chewing gum, spirituous, malt or vinous
31 liquors, seeds and plants to grow foods, prepared salads, salad bars, cold
32 sandwiches, and deli trays unless any of those items, excepting spirituous,

1 malt or vinous liquors, is actually purchased with food stamps or vouchers as
2 they are described in paragraph b of this subsection; nor shall the term 'food'
3 as used in this subsection include food and drink vended by or through
4 machines.

5 (14) "Gross sales" means the total amount received in money, credit, property or other
6 consideration valued in money for all sales of tangible personal property, products, or
7 services.

8 ~~(12) Gross taxable sales means the total amount received in money, credits, property,~~
9 ~~including the fair market value of exchange property which is to be sold thereafter in~~
10 ~~the usual course of the retailer's business, or other consideration valued in money~~
11 ~~from sales and purchases or sales at retail or deemed to be at retail, within the city,~~
12 ~~and embraced within the provisions of this article gross sales less any exemptions, in~~
13 ~~addition to the following deductions and credits:~~

14 a. ~~Provided, however, that the vendor may take credit in his report of gross sales~~
15 ~~for an amount equal to the sale price of property returned by the purchaser~~
16 ~~when the full sale price thereof is refunded, either in cash or by credit;~~

17 b. ~~Provided, further, that deduction for an amount equal to the fair market value~~
18 ~~of any exchanged property which is to be sold thereafter in the usual course of~~
19 ~~the retailer's business, if included in the full price of a new article, shall be~~
20 ~~excluded from gross taxable sales;~~

21 c. ~~Provided, further, that credit for an amount equal to taxes paid on the amount~~
22 ~~of gross sales which are represented by accounts not secured by a conditional~~
23 ~~sale contract or chattel mortgage and which are found to be worthless and are~~
24 ~~actually and properly charged off as bad debts for the purpose of the income~~
25 ~~tax imposed by the laws of the state may be credited upon a subsequent~~
26 ~~payment of the tax herein provided; but if any such accounts are thereafter~~
27 ~~collected by the vendor, a tax shall be paid upon the amount so collected.~~
28 ~~Such credit shall not be allowed with respect to any account or item therein~~
29 ~~arising either from the sale of any article under a conditional sale contract~~
30 ~~whereby the vendor retains title as security for all or part of the purchase price~~
31 ~~or from the sale of any article when the vendor takes a chattel mortgage on~~

1 ~~the article to secure all or part of the purchase price.~~

2 (15) “Internet subscription” service means software programs, systems, data and
3 applications available online through rental, lease or subscription, that provide
4 information and services including, but not limited to, data linking, data research, data
5 analysis, data filtering or record compiling.

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

11 (16) “Manufacturing” means the operation or performance of an integrated series of
12 operations which places a product, article, substance, commodity, or other tangible
13 personal property in a form, composition or character different from that in which it
14 was acquired whether for sale or for use by a manufacturer. The change in form,
15 composition or character must result in a different product having a distinctive name,
16 character or use from the raw or prepared materials.

17 ~~(4417) “Medical supplies” shall means prescription drugs for humans, prosthetic devices for~~
18 ~~humans, and special beds for patients with neuromuscular or similar debilitating~~
19 ~~ailments, when sold for the direct, personal use of a specific individual in accordance~~
20 ~~with a prescription or other written directive issued by a licensed practitioner of~~
21 ~~medicine, dentistry or podiatry; corrective eyeglass lenses (including eyeglass~~
22 ~~frames), and corrective contact lenses, when sold for the direct, personal use of a~~
23 ~~specific individual in accordance with a prescription or other written directive issued~~
24 ~~by a licensed practitioner of medicine or optometry; wheelchairs, and crutches, when~~
25 ~~sold for the direct, personal use of a specific individual; oxygen and hemodialysis~~
26 ~~products for use by a medical patient, hearing aids, hearing aid batteries, insulin,~~
27 ~~insulin measuring and injecting devices, glucose to be used for treatment of insulin~~
28 ~~reactions, and human whole blood, plasma, blood products and derivatives. This~~
29 ~~exemption excludes items purchased for use by medical and dental practitioners or~~
30 ~~medical facilities in providing their services, even though certain of those items may~~
31 ~~be packaged for single use by individual patients after which the item would be~~
32 ~~discarded.~~

1 (4518) “Motor fuel” shall mean gasoline, casing head or natural gasoline, benzol, benzene
2 and naphtha, gasohol and any liquid prepared, advertised, offered for sale, sold for
3 use or used or commercially usable in internal combustion engines for the generation
4 of power for the propulsion of motor vehicles upon the public highways. The term
5 does not include fuel used for the propulsion or drawing of aircraft or railroad cars or
6 railroad locomotives, however.

7 ~~(16) Pay television shall include, but not be limited to, cable, microwave or other television~~
8 ~~service for which a charge is imposed.~~

9 (4719) “Prepress preparation” material means all materials used by those in the printing
10 industry including, but not limited to, airbrush color photos, color keys, dies,
11 engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar,
12 plates, proofing materials, tape, transparencies, and veloxes, which are used by
13 printers in the preparation of customer specific layouts or in plates used to fill
14 customers' printing orders, which are eventually sold to a customer, either in their
15 original purchase form or in an altered form, and for which a sales or use tax is
16 demonstrably collected from the printer's customer, if applicable, either separately
17 from the printed materials or as part of the inclusive price therefor. Materials sold to a
18 printer which are used by the printer for the printer's own purposes, and are not sold,
19 either directly or in an altered form, to a customer, are not included within this
20 definition.

21 (20) “Prescription drugs for humans” means a drug which, prior to being dispensed or
22 delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect.
23 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is
24 dispensed in accordance with any written or electronic order dated and signed by a
25 licensed practitioner of the healing arts, or given orally by a practitioner and
26 immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy
27 intern, specifying the name and any required information of the patient for whom the
28 medicine, drug or poison is offered and directions, if any, to be placed on the label.

29 (21) “Price” or “purchase price” means the aggregate value measured in currency paid or
30 delivered or promised to be paid or delivered in consummation of a sale, without any
31 discount from the price on account of the cost of materials used, labor or service
32 cost, and exclusive of any direct tax imposed by the federal government or by this

1 article, and, in the case of all retail sales involving the exchange of property, also
2 exclusive of the fair market value of the property exchanged at the same time and
3 place of the exchange, if: (1) such exchanged property is to be sold thereafter in the
4 usual course of the retailer's business, or (2) such exchanged property is a vehicle
5 and is exchanged for another vehicle and both vehicles are subject to licensing,
6 registration, or certification under the laws of this state, including, but not limited to,
7 vehicles operating upon public highways, off-highway recreation vehicles, watercraft,
8 and aircraft. Any money or other consideration paid over and above the value of the
9 exchanged property is subject to tax.

10 a. Price or purchase price includes:

- 11 1. The amount of money received or due in cash and credits.
- 12 2. Property at fair market value taken in exchange but not for resale in the
13 usual course of the retailer's business.
- 14 3. Any consideration valued in money, whereby the manufacturer or
15 someone else reimburses the retailer for part of the purchase price and
16 other media of exchange.
- 17 4. The total price charged on credit sales including finance charges which
18 are not separately stated at the time of sale. An amount charged as
19 interest on the unpaid balance of the purchase price is not part of the
20 purchase price unless the amount added to the purchase price is
21 included in the principal amount of a promissory note; except the
22 interest or carrying charge set out separately from the unpaid balance
23 of the purchase price on the face of the note is not part of the purchase
24 price. An amount charged for insurance on the property sold and
25 separately stated at the time of sale is not part of the purchase price.
- 26 5. Installation, applying, remodeling or repairing the property, delivery and
27 wheeling-in charges included in the purchase price and not separately
28 stated.
- 29 6. Transportation and other charges to effect delivery of tangible personal
30 property to the purchaser.

1 7. Indirect federal manufacturers' excise taxes, such as taxes on
2 automobiles, tires and floor stock.

3 8. The gross purchase price of articles sold after manufacturing or after
4 having been made to order, including the gross value of all the
5 materials used, labor and service performed and the profit thereon.

6 b. Price or purchase price shall not include:

7 1. Any sales or use tax imposed by the State of Colorado or by any political
8 subdivision thereof.

9 2. The fair market value of property exchanged if such property is to be
10 sold thereafter in the retailers' usual course of business. This is not
11 limited to exchanges in Colorado. Out of state trade-ins are an allowable
12 adjustment to the purchase price.

13 3. Discounts from the original price if such discount and the corresponding
14 decrease in sales tax due is actually passed on to the purchaser, and
15 the seller is not reimbursed for the discount by the manufacturer or
16 someone else. An anticipated discount to be allowed for payment on or
17 before a given date is not an allowable adjustment to the price in
18 reporting gross sales.

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

26 ~~(19) Purchase price or price means the aggregate value measured in currency paid or~~
27 ~~delivered or promised to be paid or delivered in consummation of a sale, without any~~
28 ~~discount from the price on account of the cost of the property sold, cost of materials~~
29 ~~used, labor or service cost, transportation and delivery charges, or any other expense~~
30 ~~whatsoever; and provided that when articles of tangible personal property are sold by~~
31 ~~the manufacturer after manufacture or after having been made to order, the gross~~

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

8 a. The consideration received for labor or services used in installing, applying,
9 remodeling or repairing the property sold if the consideration for such services
10 is separately stated from the consideration received for the tangible personal
11 property in the retail sale;

12 b. The amount paid by any purchaser as, or in the nature of, interest or finance
13 charges on account of credit extended in connection with the sale of any
14 tangible personal property if the interest or finance charges are separately
15 stated from the consideration received for the tangible personal property
16 transferred in the retail sale.

17 (23) "Purchase" or "sale" means the acquisition for any consideration by any person of
18 taxable tangible personal property, products, or services.

19 a. These terms include capital leases, installment and credit sales, and property
20 and services acquired by:

21 1. Transfer, either conditionally or absolutely, of title or possession or both
22 to taxable tangible personal property, products, or services;

23 2. A lease, lease-purchase agreement, rental or grant of a license,
24 including royalty agreements, to use taxable tangible personal property,
25 products, or services;

26 3. Performance of taxable services; or

27 4. Barter or exchange for other taxable tangible personal property,
28 products, or services.

29 b. The terms purchase and sale do not include:

30 1. A division of partnership assets among the partners according to their

1 interests in the partnership;

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

5 3. The dissolution and the pro rata distribution of the corporation's assets
6 to its stockholders, if no consideration including, but not limited to, the
7 assumption of a liability is paid for the transfer of assets;

8 4. A transfer of a partnership or limited liability company interest;

9 5. The transfer of assets to a commencing or existing partnership or
10 limited liability company, if no consideration including, but not limited to,
11 the assumption of a liability is paid for the transfer of assets;

12 6. The repossession of personal property by a chattel mortgage holder or
13 foreclosure by a lienholder;

14 (2024) "Rail carrier" means 'rail carrier' as defined in Section 10102 of Title 49 of the United
15 States Code as of October 10, 2013, and as it may be amended hereafter.

16 (2125) "Rail carrier part" means any tangible personal property that is originally designed
17 and intended to be permanently affixed or attached as a component part of a
18 locomotive or rail car used by a rail carrier.

19 (2226) "Retail sale" means any sale within the city except a wholesale sale.

20 (23) ~~Retailer or vendor means any person selling, leasing, renting or granting a license to~~
21 ~~use tangible personal property or services at retail. Retailer or vendor shall include,~~
22 ~~but is not limited to, any:~~

23 a. ~~Auctioneer;~~

24 b. ~~Salesman, representative, peddler or canvasser, who as agent, directly or~~
25 ~~indirectly, of the dealer, distributor, supervisor, employer or principal under~~
26 ~~whom he operates or from whom he obtains the tangible personal property or~~
27 ~~services sold by such agent, makes sales of tangible personal property or~~
28 ~~services subject to the tax imposed herein; and in such event such agent shall~~
29 ~~be responsible for the collection and payment of the tax imposed by this article~~
30 ~~whenever the principal of such agent neglects or refuses to become licensed~~

1 as a vendor hereunder;

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

6 (27) "Retailer" or "vendor" means any person selling, leasing, renting, or granting a license
7 to use tangible personal property, products, or services at retail. Retailer shall
8 include, but is not limited to, any: (1) auctioneer; (2) salesperson, representative,
9 peddler or canvasser, who makes sales as a direct or indirect agent of or obtains
10 such property or services sold from a dealer, distributor, supervisor or employer; and
11 (3) charitable corporation or governmental entity which makes sales of tangible
12 personal property to the public, notwithstanding the fact that the merchandise sold
13 may have been acquired by gift or donation or that the proceeds are to be used for
14 charitable or governmental purposes.

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

25 ~~a. A division of partnership assets among the partners according to their interests~~
26 ~~in the partnership;~~

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

30 ~~c. The pro rata distribution of a corporation's assets to its stockholders upon~~
31 ~~dissolution of the corporation if no consideration including, but not limited to,~~

1 ~~the assumption of a liability is paid for the transfer of assets;~~

2 ~~d. — A transfer of a partnership interest;~~

3 ~~e. — The transfer of assets to a commencing or existing partnership if no~~
4 ~~consideration including, but not limited to, the assumption of a liability is paid~~
5 ~~for the transfer of assets;~~

6 ~~f. — The repossession of personal property by a chattel mortgage holder or~~
7 ~~foreclosure by a lienholder.~~

8 (28) “Software program” means a sequence of instructions that can be measured,
9 interpreted and executed by an electronic device (e.g. a computer, tablets, smart
10 phones) regardless of the means by which it is accessed or the medium of
11 conveyance. Software program includes: (1) custom software program, which is a
12 software program prepared to the special order or specifications of a single customer;
13 (2) pre-written software program, which is a software program prepared for sale or
14 license to multiple users, and not to the special order or specifications of a single
15 customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf
16 (“COTS”), “mass produced” or “standardized;” (3) modified software, which means
17 pre-written software that is altered or enhanced by someone other than the purchaser
18 to create a program for a particular user; and (4) the generic term “software,”
19 “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and
20 any items which add or extend functionality to existing software programs.

21 (29) “Software as a service” means software that is rented, leased or subscribed to from a
22 provider and used at the consumer’s location, including but not limited to
23 applications, systems or programs.

24 (30) “Software license fee” means a fee charged for the right to use, access, or maintain
25 software programs.

26 (31) “Software maintenance agreement” means an agreement, typically with a software
27 provider, that may include (1) provisions to maintain the right to use the software; (2)
28 provisions for software upgrades including code updates, version updates, code fix
29 modifications, enhancements, and added or new functional capabilities loaded into
30 existing software; or (3) technical support.

1 (32) "Sound system services" means the provision of broadcast or pre-recorded audio
2 programming to a building or portion thereof. Such term does not include installation
3 of sound systems where the entire system becomes the property of the building
4 owner or the sound system service is for presentation of live performances.

5 (2533)"Special fuel" means kerosene oil, kerosene distillate, diesel fuel, all liquefied
6 petroleum gases, and all combustible gases and liquids for use in the generation of
7 power for propulsion of motor vehicles upon the public highways. The term does not
8 include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad
9 locomotives, however.

10 (2634)"Tangible personal property" means ~~corporeal personal property.~~ personal property
11 that can be one or more of the following: seen, weighed, measured, felt, touched,
12 stored, transported, exchanged, or that is in any other manner perceptible to the
13 senses.

14 ~~(27) Tax means either the tax payable by the purchaser of a commodity or service subject~~
15 ~~to tax or the aggregate amount of taxes due from the vendor of such commodities or~~
16 ~~services during the period for which the vendor is required to report his collections, as~~
17 ~~the context may require.~~

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

21 (35) "Tax deficiency" or "deficiency" means any amount of tax, penalty, interest, or other
22 fee that is not reported and/or not paid on or before the date that any return or
23 payment of the tax is required under the terms of this article.

24 (36) "Taxable Sales" means gross sales less any exemptions and deductions specified in
25 this chapter.

26 ~~(29) Taxable services or services means services subject to tax pursuant to this article.~~

27 (37) "Taxable service" means any service subject to tax pursuant to this article.

28 ~~(30) Telecommunications service means the transmission of any two-way interactive~~
29 ~~electromagnetic communications including, but not limited to, voice, image, data and~~
30 ~~any other information, by the use of any means but not limited to wire, cable, fiber~~

1 ~~optical cable, microwave, radio wave or any combinations of such media.~~
2 ~~Telecommunications service includes, but is not limited to, basic local exchange~~
3 ~~telephone service, toll telephone service and teletypewriter service, including, but not~~
4 ~~limited to, residential and business service, directory assistance, cellular mobile~~
5 ~~telephone or telecommunication service, specialized mobile radio and two-way~~
6 ~~paggers and paging service, including any form of mobile two-way communication.~~
7 ~~Telecommunications service does not include separately stated nontransmission~~
8 ~~services which constitute computer processing applications used to act on the~~
9 ~~information to be transmitted.~~

10 (38) "Telecommunications service" means the service of which the object is the
11 transmission of any two-way interactive electronic or electromagnetic
12 communications including but not limited to voice, image, data and any other
13 information, by the use of any means but not limited to wire, cable, fiber optical cable,
14 microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of
15 such media, including any form of mobile two-way communication.

16 (39) "Television and entertainment services" means audio or visual content, that can be
17 transmitted electronically by any means, for which a charge is imposed.

18 ~~(31) Wholesale sale means:~~

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

- 28 1. ~~of the frequent replacement of independent contractors or agents;~~
- 29 2. ~~of the lack of a place of business in which to display a city retail sales~~
30 ~~license;~~
- 31 3. ~~of the lack of a place of business in which to keep records;~~

1 4. ~~of the lack of adequate records;~~

2 5. ~~the persons engaged in selling, or in the chain of selling events, are~~
3 ~~minors or transients; or~~

4 6. ~~the persons selling, or in the chain of events leading to sale, are~~
5 ~~engaged essentially in providing services in transferring tangible~~
6 ~~personal property;~~

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

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

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

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

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

4 (40) "Wholesale sale" means a sale by a wholesaler to a retailer, jobber, dealer, or other
5 wholesaler for resale and does not include a sale by a wholesaler to a user or
6 consumer not for resale; latter types of sales shall be deemed to be retail sales and
7 shall be subject to the provisions of this article.

8 ~~(32) Wholesaler means a person doing a regularly organized wholesale or jobbing~~
9 ~~business and selling to licensed retailers, merchants, jobbers, dealers or other~~
10 ~~wholesalers, for the purpose of resale.~~

11 (41) "Wholesaler" means any person doing an organized wholesale or jobbing business
12 and selling to a retailer, jobber, dealer, or other wholesaler, for the purpose of resale,
13 and not for storage, use, consumption, or distribution.

14 **Section 4.** That section 53-25 of the Denver Revised Municipal Code is hereby amended by
15 adding the underlined language and deleting the stricken language to read and be read as follows:

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

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

- 19 (1) On the purchase price ~~paid or charged upon~~ for all sales and purchases of tangible
20 personal property at retail.
- 21 (2) In the case of retail sales involving the exchange of property, on the purchase price
22 ~~paid or charged~~, including the fair market value of the property exchanged at the time
23 and place of the exchange, excluding however, from the consideration or purchase
24 price the fair market value of the exchanged property if such exchanged property is to
25 be sold thereafter in the usual course of the retailer's business.
- 26 (3) Upon the purchase price ~~or charge~~ for telephone and telecommunications services,
27 including in addition to audio and video transmission and reception, other two-way
28 electronic or electromagnetic wave transmissions, receptions or communications of
29 any sort, by or through any medium, whether such services are furnished by public or
30 private corporations or associations, that, except as otherwise provided by this article
31 for mobile telecommunication services, both originate in and are charged to a
32 telephone number or an account located within the city, excepting, however, monthly

1 or other periodic usage charges that represent varying amounts billed to accounts for
2 a subscriber's actual use of interstate services provided by a long-distance
3 telecommunications company and charged to the subscriber by or on behalf of a long-
4 distance telecommunications company.

5 (4) Upon the purchase price ~~or charge~~ for coal, petroleum, liquid petroleum, electric, steam
6 and natural gas services, and any other products used for energy-producing purposes,
7 whether furnished by municipal, public or private corporations or associations,
8 furnished and sold for domestic, commercial or industrial consumption and not for
9 resale.

10 (5) Upon the ~~amount paid~~ purchase price for food or drink served or furnished in or by
11 restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs,
12 nightclubs, cabarets, resorts, snack bars, caterers, boardinghouses, carryout shops
13 and other places at which prepared food or drink is regularly sold, including sales from
14 pushcarts, motor vehicles and other mobile facilities. Cover charges, admission or
15 entrance fees, and mandatory service or service-related charges, whether described
16 as tips, gratuities or otherwise, shall be included as part of the ~~amount paid~~ purchase
17 price for such food or drink.

18 (6) Upon the purchase price ~~or charge~~ for the furnishing or sale to customers within the
19 city of informational or entertainment service wherein the relay or transmission of
20 electromagnetic waves through any medium, tangible or intangible, including cable,
21 glass fiber and ambient air, is necessary for the service to be received, including, but
22 not limited to, digital products, internet subscription services, sound system services,
23 and television and entertainment services, ~~pay television,~~ excepting however,
24 telephone and telecommunications services described in section 53-25(3) and
25 television, cinema or similar programming provided at a theater or similar place open
26 to the public.

27 (7) Upon the purchase price ~~or charge~~ for digital products, software programs, software
28 as a service, software license fees, and software maintenance agreements. ~~data~~
29 ~~processing equipment and data processing programs.~~

30 **Section 5.** That section 53-26 of the Denver Revised Municipal Code is hereby amended by
31 adding the underlined language and deleting the stricken language to read and be read as follows:

32 **Sec. 53-26. - Exemptions.**

33 There shall be exempt from taxation under the provisions of this article the following:

- 1 (1) All sales to the United States government, to the state, its departments and institutions,
2 and the political subdivisions thereof only when purchased in their governmental
3 capacities.
- 4 (2) All sales made to religious or charitable corporations when purchased for their regular
5 religious or charitable functions and activities.
- 6 (3) All sales of cigarettes.
- 7 (4) All sales of motor fuel and special fuel ~~as defined in this article.~~
- 8 (5) All sales ~~and purchases~~ of ~~neat~~ cattle, sheep, lambs, swine and goats; all sales of
9 mares and stallions for breeding purposes.
- 10 (6) All sales ~~and purchases~~ of feed for livestock or poultry and all sales of seeds to farmers,
11 ranchers, truck farmers, florists and horticulturists who sell the crops resulting from the
12 propagation of such seeds or use such crops as feed for livestock or poultry.
- 13 (7) ~~The sale and purchase~~ All sales of medical supplies.
- 14 (8) ~~The sale and purchase~~ All sales of food.
- 15 (9) ~~Sales~~ All sales of tangible personal property to a purchaser residing or doing business
16 outside the city, where delivery is made to the purchaser's residence or business
17 address outside the city by the vendor; on the vendor's vehicle; by common, contract,
18 or commercial carrier that is hired by the vendor, or by mail.
- 19 (10) All sales which the city is prohibited from taxing under the Constitution or laws of the
20 United States or the Constitution of the state.
- 21 (11) ~~Sale~~ All sales of automotive vehicles as defined in this article that are registered and
22 required by state law to be registered outside the city.
- 23 (12) All sales of farm ~~machinery as defined in this article~~ equipment used directly for
24 plowing, planting, cultivating or harvesting of crops.
- 25 (13) ~~Sales~~ All sales of tangible personal property for use in improving real property outside
26 the city only in the amount and to the extent that a use tax has been or will be paid in
27 respect to the proposed use of such property to a municipal corporation organized and
28 existing under the authority of the laws or the constitution of any state, if the purchaser
29 presents to the retailer a building permit or other documentation acceptable to the
30 manager showing that a use tax has been or will be paid to the municipality in which
31 the real property is located.
- 32 (14) ~~Sales~~ All sales of tangible personal property to a natural gas and electric utility or a
33 telephone utility for use in its business operations outside the city, even though the

1 property is delivered and temporarily stored within the city.

2 (15) ~~Sales~~ All sales of machinery, tools, and equipment, including replacement parts, to a
3 transportation utility to be used by the utility in the operation of an equipment
4 maintenance facility and at an industrial building:

- 5 a. That is located in the city within an enterprise zone designated as such pursuant
6 to state law;
- 7 b. That contains at least one million (1,000,000) square feet of enclosed, useable
8 floor space on a single level;
- 9 c. That serves as a regular place of work and for reporting for duty for at least two
10 thousand (2,000) employees in the third year of operations of the maintenance
11 facility and continually thereafter; and
- 12 d. That is operated by an interstate carrier for hire primarily for maintaining,
13 rebuilding or repairing equipment moving in interstate commerce.

14 This exemption may be applicable to the first and second years of operations at the
15 industrial building provided that the utility establishes a reserve account for the tax for
16 its return to the city at the end of the third year of operations should less than two
17 thousand (2,000) employees be employed at the facility in said third year.

18 (16) ~~Sales~~ All sales of construction ~~and building~~ materials for use in the construction,
19 reconstruction or remodeling of a new industrial building of a transportation utility to be
20 used by the utility for an equipment maintenance facility:

- 21 a. That is located in the city within an enterprise zone designated as such pursuant
22 to state law;
- 23 b. That is designed to contain at least one million (1,000,000) square feet of
24 enclosed, useable floor space on a single level;
- 25 c. That serves as a regular place of work and for reporting for duty for at least two
26 thousand (2,000) employees in the third year of operations of the maintenance
27 facility and continually thereafter; and
- 28 d. That is operated by an interstate carrier for hire primarily for maintaining,
29 rebuilding or repairing equipment moving in interstate commerce.

30 This exemption may be applicable to the design and construction phases of the new
31 facility and to the first and second years of operations at the facility provided that the
32 utility establishes a reserve account for the tax for its return to the city at the end of the
33 third year of operations should less than two thousand (2,000) employees be employed

1 at the facility in said third year.

2 (17) All sales of prepress preparation materials ~~as defined in this article.~~

3 (18) ~~Sales~~ All sales made to, billed directly to, and paid for directly by, qualified hospital
4 organizations (as defined in paragraph ~~(a)~~ a. of this subsection (18)), provided that the
5 property or service purchased by the qualified hospital organization is employed in
6 furtherance of an exempt function (as defined in paragraph b. of this subsection (18)).

7 ~~(a)~~a. For purposes of this subsection (18), a "qualified hospital organization" is any
8 of the following:

9 ~~(1)~~1. An organization that is exempt from federal income tax under section 115
10 or section 501(c)(3) of the United States Internal Revenue Code of 1986,
11 as amended, but only if the organization holds a license to operate a
12 "general hospital" for people issued pursuant to sections 25-3-101 and
13 25-3-102, Colorado Revised Statutes (2000), as amended, including any
14 successor provisions to those sections, and operates a general hospital;

15 ~~(2)~~2. A corporation or trust that:

16 ~~(a)~~a. Is exempt from federal income tax under section 501(c)(3) of the
17 United States Internal Revenue Code of 1986, as amended; and

18 ~~(b)~~b. Owns or employs personal property or improvements that are
19 used in the operations of one (1) or more organizations described
20 in subparagraph ~~(a)(1)~~ 1.a. of this subsection (18); and

21 ~~(c)~~c. Either (i) directly controls, or is controlled by, one (1) or more
22 organizations described in subparagraph ~~(a)(1)~~ a.1. of this
23 subsection (18), (ii) is controlled by a management organization
24 as defined in subparagraph ~~(a)(3)~~ a.3. of this subsection (18) in
25 common with one (1) or more organizations described in
26 subparagraph ~~(a)(1)~~ a.1. of this subsection (18), or (iii) owns a
27 hospital that is licensed to operate as a "general hospital" for
28 people pursuant to sections 25-3-101 and 25-3-102, Colorado
29 Revised Statutes (2000), as amended, including any successor
30 provisions to those sections, and that is operated by an
31 organization described in subparagraph ~~(a)(1)~~ 1.a. of this
32 subsection (18).

33 ~~(3)~~3. An organization that is exempt from federal income tax under section

1 501(c)(3) of the United States Internal Revenue Code of 1986, as
2 amended, and a principal function of which is to manage the property or
3 operations, or both, of one (1) or more organizations described in
4 subparagraphs ~~(1)~~ 1. or ~~(2)~~ 2. of this paragraph ~~(a)~~ a.; and

5 ~~(4)~~4. A partnership, limited partnership, limited liability limited partnership,
6 limited liability partnership, limited liability company, or joint venture if all
7 of the partners, members, joint venturers or other participants in such
8 partnership, limited partnership, limited liability limited partnership,
9 limited liability partnership, limited liability company or joint venture are
10 organizations described in subparagraphs ~~(1), (2) or (3)~~ 1., 2., or 3. of
11 this paragraph ~~(a)~~ a.

12 ~~(b)~~b. For purposes of this subsection (18):

13 ~~(1)~~1. Except as provided in subparagraph ~~(3)~~ 3. of this paragraph ~~(b)~~ b.,
14 "employed in furtherance of an exempt function" means employed by a
15 qualified hospital organization in an activity from which none of the
16 proceeds are treated as unrelated business income.

17 ~~(2)~~2. "Unrelated business income" means gross income derived from any
18 unrelated trade or business within the meaning of section 512 of the
19 United States Internal Revenue Code of 1986, as amended.

20 ~~(3)~~3. If the ~~purchase and~~ sale of any property or service would be exempt
21 under this subsection (18) but for the fact that the property or service is
22 employed in an activity from which a portion of the proceeds is treated
23 as unrelated business income, the manager of finance is authorized to
24 approve written formulas or methodologies (including formulas or
25 methodologies of individual qualified hospital organizations) as may be
26 appropriate and reasonable to determine, based on the evidence
27 available, the percentage of the proceeds from such activity that is not
28 treated as unrelated business income. This calculated percentage shall
29 be the percentage of the cost of such property or service that will be
30 exempt under this subsection (18). The manager of finance may
31 condition approval of formulas and methodologies on receipt of such
32 information as is reasonably deemed necessary for proper
33 implementation of such formulas and methodologies.

1 (19) ~~The sale~~ All sales of aircraft to an airline company that is used in interstate commerce
2 by the airline company.

3 **Section 6.** That subsection 53-27 of the Denver Revised Municipal Code is hereby amended
4 by adding the underlined language and deleting the stricken language to read and be read as follows:

5 **Sec. 53-27. - Retailers to collect tax.**

6 (a) Tax rates. A tax of three and sixty-five one-hundredths (3.65) percent is imposed and
7 levied upon all taxable sales of ~~commodities~~ tangible personal property, products, and
8 services except ~~those commodities~~ the tangible personal property, products, or
9 services specified in subsection (b) of this section. In order to avoid amounts that are
10 fractions of pennies, taxpayers shall use a rounding procedure approved by the
11 manager when computing the tax.

12 On those taxable sales of ~~commodities~~ tangible personal property, products, or services
13 specified in subsection (b) of this section, there is levied and imposed upon all taxable sales
14 a tax in accordance with the rates set forth in subsection (b).

15 (b) Special rates.

16 (1) Special note for aviation and railway fuel. Any fuel in the form of liquid or gas
17 that is prepared, advertised, offered for sale, sold for use and used or
18 commercially usable for the generation of power for the propulsion or drawing
19 of aircraft, railroad cars or railroad locomotives shall be taxed at the rate of four
20 cents (\$0.04) for each gallon purchased. In order to avoid amounts that are
21 fractions of pennies, taxpayers shall use a rounding procedure approved by the
22 manager when computing the tax.

23 (2) Special note for short-term rentals of automotive vehicles. Automotive vehicles
24 as defined in this article, when they are for any term of thirty (30) days or less,
25 hired for use, rented, leased or transferred under a grant of a license to use,
26 shall be taxed at the rate of seven and one-quarter (7.25) percent of the rentals
27 paid or purchase price. In order to avoid amounts that are fractions of pennies,
28 taxpayers shall use a rounding procedure approved by the manager when
29 computing the tax. One and three-quarters (1.75) percent of such tax shall be
30 used to pay debt related to and costs of operating, maintaining and improving
31 the National Western Center Campus and the Colorado Convention Center and
32 other tourism related projects.

33 (3) Special note for prepared food and beverages. Food and beverages not

1 exempted from taxation under section 53-26(8) of this article shall be taxed at
2 the rate of four (4) percent of the purchase price. In order to avoid amounts that
3 are fractions of pennies, taxpayers shall use a rounding procedure approved by
4 the manager when computing the tax.

5 (c) Tax to be shown as separate item. Except as provided in this section, retailers shall
6 add the tax imposed, or the average equivalent thereof, to the purchase price, showing
7 such tax as a separate and distinctive item, and when added, such tax shall constitute
8 a part of such price and shall be a debt from the purchaser to the retailer until paid,
9 recoverable at law in the same manner as other debts.

10 (d) Vending machines; liquor by the drink. Notwithstanding provisions hereinafter
11 regarding the unlawful assumption or absorption of the tax, any retailer selling malt,
12 vinous or spirituous liquors by the drink or vending items through coin-operated
13 vending machines may include in the purchase price for the drink or the purchase price
14 for the vended item the tax levied by this article; but no such retailer shall advertise or
15 hold out to the public in any manner, directly or indirectly, that such tax is not included
16 as a part of the sales price to the consumer.

17 (e) Retailer as collecting agent. The retailer shall be entitled as collecting agent of the city
18 to apply and credit the amount of his collections of the tax levied by this article against
19 the amount required to be paid over by him under the provisions of section 53-28,
20 remitting any excess of collections over the amount required by section 53-28 and
21 rounding to the nearest whole dollar as provided in section 53-28, to the manager in
22 the retailer's next periodic sales tax return.

23 (f) Retailer not to benefit. No retailer shall gain any benefit from the collection or payment
24 of the tax, except as permitted by this article, and the use of the rounding procedure
25 approved by the manager shall not relieve the retailer from liability for payment of the
26 amount required by section 53-28.

27 (g) Sales tax increment to fund the Denver preschool program. In addition to the sales tax
28 otherwise imposed by this section, a tax of fifteen one-hundredths of one (.15) percent
29 shall be paid on all taxable sales of ~~commodities~~ tangible personal property, products,
30 or services, except on ~~commodities~~ tangible personal property, products, or services
31 specified in subsection (b) of this section, beginning January 1, 2015 and expiring
32 December 31, 2026. The revenue from such additional tax shall be used for the sole
33 purpose of funding the Denver preschool program pursuant to article III of chapter 11.

1 **Section 7.** That subsection 53-28(a) of the Denver Revised Municipal Code is hereby
2 amended by adding the underlined language and deleting the stricken language to read and be read
3 as follows:

4 **Sec. 53-28. - Retailer responsible for payment of tax.**

5 (a) Amount. Every retailer shall, irrespective of other provisions of this article, be liable and
6 responsible for the payment of an amount equivalent to three and sixty-five one-
7 hundredths (3.65) percent of the retailer's ~~gross taxable sales of commodities~~ tangible
8 personal property, products, or services specified in this article, except:

- 9 (1) Aviation and railway fuel, as to which the rate of four cents (\$0.04) for each
10 gallon purchased shall apply;
- 11 (2) Automotive vehicles when they are for any term of thirty (30) days or less hired
12 for use, rented, leased or transferred under a grant of a license to use, as to
13 which a rate of taxation as set forth in subsection 53-27(b)(2) shall apply;
- 14 (3) Food and beverages not exempted from taxation under subsection 53-26(8) of
15 this article, as to which the rate of four (4) percent shall apply;
- 16 (4) For each of which respective rates aforesaid the retailer shall be liable for an
17 equivalent amount;
- 18 (5) Every retailer shall, on its return, round each calculation, as directed on such
19 form as the manager may require, to the nearest whole dollar and remit the
20 rounded amount. In rounding under this section, any amount of forty-nine cents
21 (\$0.49) or less shall be rounded down, and any amount of fifty cents (\$0.50) or
22 higher shall be rounded up.

23 **Section 8.** That section 53-33 of the Denver Revised Municipal Code is hereby amended by
24 adding the underlined language and deleting the stricken language to read and be read as follows:

25 **Sec. 53-33. - Tax on rentals.**

26 When the right to possession or use of any article of tangible personal property,
27 product, or service taxable under the terms of this article is granted under a lease, hire, rental
28 contract or grant of a license to use (including royalty agreements), the tax imposed by this
29 article shall be computed, collected and returned by the vendor based on the rentals, fees or
30 royalties paid, unless the manager directs payment of the tax on another basis.

31 **Section 9.** That section 53-35 of the Denver Revised Municipal Code is hereby amended by
32 adding the underlined language and deleting the stricken language to read and be read as follows:

33 **Sec. 53-35. - Automotive vehicle—Registration license.**

1 (a) No registration certificate or license shall be issued by the manager for the operation
2 of any automotive vehicle unless and until the tax levied by this article upon the
3 purchase ~~and or~~ sale of such vehicle has been paid.

4 (b) No certificate of title evidencing ownership of any automotive vehicle shall be issued
5 by the manager unless and until said tax upon the purchase ~~and or~~ sale of such
6 automotive vehicle has been paid.

7 **Section 10.** That subsection 53-50(f) of the Denver Revised Municipal Code is hereby
8 amended by adding the underlined language and deleting the stricken language to read and be read
9 as follows:

10 (f) Burden of proof. The burden of proof that sales of tangible personal property, products,
11 and services upon which refunds of taxes are claimed, or for which modifications or
12 cancellations of assessments are sought, are exempt from or not subject to taxation
13 under this article shall be on the taxpayer and such proof shall be by a preponderance
14 of evidence.

15 **Section 11.** That section 53-67 of the Denver Revised Municipal Code is hereby amended
16 by adding the underlined language and deleting the stricken language to read and be read as follows:

17 **Sec. 53-67. - License and tax in addition to all others.**

18 The license required and the tax levied by this article shall be in addition to all other licenses
19 required and taxes levied by law except as herein otherwise provided. No delinquency in payment
20 and no violation of this article shall be grounds for the suspension or revocation of any license issued
21 to any person engaged in business ~~within~~ the city by any official of the city under any licensing
22 provisions of the Code or other ordinances, neither shall the same be grounds for the suspension or
23 revocation of any state license issued by any licensing authority pursuant to the statutes of the state.

24 **Section 12.** That section 53-77 of the Denver Revised Municipal Code is hereby amended
25 by adding the underlined language and deleting the stricken language to read and be read as follows:

26 **Sec. 53-77. - Exemption.**

27 No license shall be required for any person engaged ~~exclusively in the business~~ in the city of
28 exclusively selling commodities-tangible personal property, products, or services which are exempt
29 from taxation under this article or under article III of this chapter.

30 **Section 13.** That section 53-92 of the Denver Revised Municipal Code is hereby amended
31 by adding the underlined language and deleting the stricken language to read and be read as follows:

32 **Sec. 53-92. - Legislative intent.**

33 ~~(a)~~(1) It is hereby declared to be the legislative intent of the city, acting through its duly

1 elected representatives, that, for the purposes of this article, every person who stores,
2 uses, distributes or consumes in the city any article of tangible personal property,
3 product, or any service subject to the provisions of this article, purchased at retail, is
4 exercising a taxable privilege.

5 ~~(b)~~(2) It is hereby declared to be the legislative intent of the city, acting through its duly
6 elected representatives, that, for the purposes of this article, every vendor who is
7 engaged in business in the city and who shall deliver or cause to be delivered to the
8 purchaser in the city any tangible personal property, product, or service taxable herein
9 shall collect the tax imposed by this article upon the basis of an addition of the tax
10 imposed by this article to the purchase price of such property or service that is
11 purchased at any one (1) time by every such purchaser in the manner hereinafter set
12 forth.

13 ~~(c)~~(3) It is hereby declared to be the legislative intent of the city, acting through its duly
14 elected representatives, that the provisions of this article shall apply to any person who
15 has already paid a retail sales tax or a use tax in respect to the sale of ~~a service or~~
16 tangible personal property, a product, or a service taxable hereunder, to a municipal
17 corporation organized and existing under the authority of the laws or the Constitution
18 of any state in an amount less than the tax imposed by this article, and who thereafter
19 causes ~~a service or~~ tangible personal property, a product, or a service taxable
20 hereunder, to be used, stored, distributed or consumed in the city, but the tax imposed
21 by this article shall, in such event, be measured by the difference between the amount
22 imposed by this article and the amount previously imposed by the other municipality
23 on said sale. If the retail sales tax imposed and paid to such municipal corporation
24 aforesaid is equal to or more than the tax imposed by this article, no tax shall be due
25 hereunder for the exercise of the privilege of using, storing, distributing or consuming
26 such service or personal property in the city.

27 ~~(d)~~(4) It is hereby declared to be the legislative intent of the city, acting through its duly
28 elected representatives, that, for purposes of this article, the tax imposed hereunder
29 be reduced by the amount of such tax which the city is prohibited from collecting under
30 the state and federal Constitutions and laws of the United States by reason of a tax
31 legally imposed and paid, in respect to a sale of ~~services or~~ tangible personal property,
32 a product, or service taxable hereunder, to another state or local, including municipal,
33 government.

1 **Section 14.** That section 53-95 of the Denver Revised Municipal Code is hereby amended
2 by adding the underlined language and deleting the stricken language to read and be read as follows:

3 **Sec. 53-95. - Definitions.**

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

- 10 ~~(1) *Aircraft* means any contrivance now known or hereafter invented, used, or designed~~
11 ~~for navigation or flight through the air and designed to carry at least one person.~~
12 ~~Aircraft shall not include aircraft parts.~~
- 13 (1) "Aircraft" means a device that is used or intended to be used for flight in the air and
14 designed to carry at least one person.
- 15 (2) "Aircraft part" means any tangible personal property that is intended to be
16 permanently affixed or attached as a component part of an aircraft.
- 17 (3) "Aircraft simulator" means a Flight Simulator Training Device (FSTD) as defined in
18 Part I of Title 14 of the Code of Federal Regulations that is qualified in accordance
19 with Part 60 of Title 14 of the Code of Federal Regulations for use in a Federal
20 Aviation Administration Approved Flight Training Program.
- 21 (4) "Aircraft simulator part" means any tangible personal property that is originally
22 designed and intended to be permanently affixed or attached as a component part of
23 an aircraft, and which will also function when it is permanently affixed or attached as
24 a component part of an aircraft simulator.
- 25 (5) "Airline company" means any operator who engages in the carriage by aircraft of
26 persons or property as a common carrier for compensation or hire, or the carriage of
27 mail, or any aircraft operator who operates regularly between two (2) or more points
28 and publishes a flight schedule. Airline company shall not include operators whose
29 aircraft are all certified for a gross takeoff weight of twelve thousand five hundred
30 (12,500) pounds or less and who do not engage in scheduled service or mail carriage

1 service.

2 (6) “Automotive vehicle” means any vehicle or device in, upon or by which any person or
3 property is or may be transported or drawn upon a public highway, or any device
4 used or designed for aviation or flight in the air. Automotive vehicle includes, but is
5 not limited to, motor vehicles, trailers, semi-trailers or mobile homes. Automotive
6 vehicle shall not include devices moved by human power or used exclusively upon
7 stationary rails or tracks.

8 (7) “Business” ~~shall include~~ means all activities engaged in or caused to be engaged in
9 with the object of gain, benefit or advantage, direct or indirect.

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

22 (9) “Construction equipment” means any equipment, including mobile machinery and
23 self-propelled construction equipment and mobile equipment, which is used to erect,
24 install, alter, demolish, repair, remodel, or otherwise make improvements to any real
25 property, building, structure or infrastructure.

26 (910) ~~“Construction and building materials”~~ means tangible personal property which, when
27 combined with other tangible property, loses its identity to become an integral and
28 inseparable part of a structure or project, ~~and the term includes~~ including public and
29 private improvements, ~~to real property.~~ Construction and building materials include,
30 but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking
31 material, cement, concrete, conduit, electric wiring and connections, fireplace inserts,

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

10 (11) "Consumer" means any person in the city who purchases, uses, stores, distributes or
11 otherwise consumes tangible personal property, products, or taxable services,
12 purchased from sources inside or outside the city.

13 (12) "Digital product" means an electronic product including, but not limited to: (1) "digital
14 images" which means works that include, but are not limited to, the following that are
15 generally recognized in the ordinary and usual sense as "photographs," "logos,"
16 "cartoons," or "drawings," (2) "digital audio-visual works" which means a series of
17 related images which, when shown in succession, impart an impression of motion,
18 together with accompanying sounds, if any, (3) "digital audio works" which means
19 works that result from the fixation of a series of musical, spoken, or other sounds,
20 including ringtones. For purposes of the definition of "digital audio works," "ringtones"
21 means digitized sound files that are downloaded onto a device and that may be used
22 to alert the customer with respect to a communication, and (4) "digital books" which
23 means works that are generally recognized in the ordinary and usual sense as
24 "books."

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

30 a. ~~The maintaining within the city directly or indirectly or by a subsidiary of an~~
31 ~~office, distributing house, sales room or house, warehouse or other place of~~
32 ~~business.~~

1 ~~b. The soliciting, either by direct representatives, indirect representatives,~~
2 ~~manufacturer's agent, or by distribution of catalogues or other advertising, or~~
3 ~~by use of any communication media, or by use of the newspaper, radio or~~
4 ~~television advertising media, or by any other means whatsoever of business~~
5 ~~from persons residing in the city and by reason thereof receiving orders from~~
6 ~~such persons residing in the city for purchasing, or hiring tangible personal~~
7 ~~property or taxable services for use, consumption, distribution or storage in the~~
8 ~~city; and the tangible personal property or services so ordered, purchased or~~
9 ~~leased actually comes to rest or is used for any length of time in the city and,~~
10 ~~in the case of tangible personal property, becomes a part of the mass of~~
11 ~~property in the city as a result thereof.~~

12 (13) "Engaged in business in the city" means performing or providing services or selling,
13 leasing, renting, delivering or installing tangible personal property, products or
14 services, for storage, use or consumption, within the city. Engaged in business in the
15 city includes, but is not limited to, any one of the following activities by a person: (1)
16 directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom,
17 warehouse, or other place of business within the taxing jurisdiction; (2) sends one or
18 more employees, agents or commissioned sales persons into the taxing jurisdiction
19 to solicit business or to install, assemble, repair, service, or assist in the use of its
20 products, or for demonstration or other reasons; (3) maintains one or more
21 employees, agents or commissioned sales persons on duty at a location within the
22 taxing jurisdiction; or (4) owns, leases, rents or otherwise exercises control over real
23 or personal property within the taxing jurisdiction.

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

27 (14) "Farm equipment" means any farm tractor, as defined in Section 42-1-102(33),
28 C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and
29 irrigation equipment having a per unit purchase price of at least one thousand dollars
30 (\$1,000.00). Farm equipment also includes, regardless of purchase price,
31 attachments and baling wire, binders twine and surface wrap used primarily and
32 directly in any farm operation. Farm equipment also includes, regardless of purchase

1 price, parts that are used in the repair or maintenance of the farm equipment
2 described in this paragraph, all shipping pallets, crates, or aids paid for by a farm
3 operation, and aircraft designed or adapted to undertake agricultural applications.
4 Farm equipment also includes, regardless of purchase price, dairy equipment. Except
5 for shipping pallets, crates or aids used in the transfer or shipping of agricultural
6 products, Farm equipment does not include: (1) vehicles subject to the registration
7 requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such
8 vehicles are used; (2) machinery, equipment, materials, and supplies used in a
9 manner that is incidental to a farm operation; (3) maintenance and janitorial
10 equipment and supplies; and (4) tangible personal property used in any activity other
11 than farming, such as office equipment and supplies and equipment and supplies
12 used in the sale or distribution of farm products, research, or transportation.

13 (4215) "Food" shall mean:

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

1 as used in this subsection include food and drink vended by or through
2 machines.

3 (16) "Gross sales" means the total amount received in money, credit, property or other
4 consideration valued in money for all purchases or sales of tangible personal
5 property, products, or services.

6 ~~(13) Gross taxable sales means the total amount received in money, credits, property,~~
7 ~~including the fair market value of exchange property which is to be sold thereafter in~~
8 ~~the usual course of the retailer's business, or other consideration valued in money~~
9 ~~from sales and purchases at retail or deemed to be at retail, within the city and~~
10 ~~embraced within the provisions of this article:~~

11 a. ~~Provided, however, that the vendor may take credit in his report of gross sales~~
12 ~~for an amount equal to the sale price of property returned by the purchaser~~
13 ~~when the full sale price thereof is refunded, either in case or by credit;~~

14 b. ~~Provided, further, that the fair market value of any exchanged property which~~
15 ~~is to be sold thereafter in the usual course of the retailer's business, if included~~
16 ~~in the full price of a new article, shall be excluded from gross taxable sales;~~

17 c. ~~Provided, further, that taxes paid on the amount of gross sales which are~~
18 ~~represented by accounts not secured by conditional sale contract or chattel~~
19 ~~mortgage and which are found to be worthless and are actually and properly~~
20 ~~charged off as bad debts for the purpose of the income tax imposed by the~~
21 ~~laws of the state may be credited upon a subsequent payment of the tax~~
22 ~~herein provided; but if any such accounts are thereafter collected by the~~
23 ~~vendor, a tax shall be paid upon the amount so collected. Such credit shall not~~
24 ~~be allowed with respect to any account or item therein arising either from the~~
25 ~~sale of any article under a conditional sale contract whereby the vendor retains~~
26 ~~title as security for all or part of the purchase price or from the sale of any~~
27 ~~article when the vendor takes a chattel mortgage on the article to secure all or~~
28 ~~part of the purchase price.~~

29 (17) "Internet subscription service" means software programs, systems, data and
30 applications available online through rental, lease or subscription, that provide
31 information and services including, but not limited to, data linking, data research, data

1 analysis, data filtering or record compiling.

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

7 (18) "Manufacturing" means the operation or performance of an integrated series of
8 operations which places a product, article, substance, commodity, or other tangible
9 personal property in a form, composition or character different from that in which it
10 was acquired whether for sale or for use by a manufacturer. The change in form,
11 composition or character must result in a different product having a distinctive name,
12 character or use from the raw or prepared materials.

13 ~~(1519)~~ "Medical supplies" shall mean prescription drugs for humans, prosthetic devices for
14 humans, and special beds for patients with neuromuscular or similar debilitating
15 ailments, when sold for the direct, personal use of a specific individual in accordance
16 with a prescription or other written directive issued by a licensed practitioner of
17 medicine, dentistry or podiatry; corrective eyeglass lenses (including eyeglass
18 frames), and corrective contact lenses, when sold for the direct, personal use of a
19 specific individual in accordance with a prescription or other written directive issued
20 by a licensed practitioner of medicine or optometry; wheelchairs, and crutches, when
21 sold for the direct, personal use of a specific individual; oxygen and hemodialysis
22 products for use by a medical patient, hearing aids, hearing aid batteries, insulin,
23 insulin measuring and injecting devices, glucose to be used for treatment of insulin
24 reactions, and human whole blood, plasma, blood products and derivatives. This
25 exemption excludes items purchased for use by medical and dental practitioners or
26 medical facilities in providing their services, even though certain of those items may
27 be packaged for single use by individual patients after which the item would be
28 discarded.

29 (20) "Mobile machinery and self-propelled construction equipment" means those vehicles,
30 self-propelled or otherwise, which are not designed primarily for the transportation of
31 persons or cargo over the public highways, and those motor vehicles which may
32 have originally been designed for the transportation of persons or cargo over the

1 public highways, and those motor vehicles which may have originally been designed
2 for the transportation of persons or cargo but which have been redesigned or
3 modified by the mounting thereon of special equipment or machinery, and which may
4 be only incidentally operated or moved over the public highways. This definition
5 includes but is not limited to wheeled vehicles commonly used in the construction,
6 maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

7 (4521) ~~“Motor fuel” shall mean~~ gasoline, casing head or natural gasoline, benzol, benzene
8 and naphtha, gasohol and any liquid prepared, advertised, offered for sale, sold for
9 use or used or commercially usable in internal combustion engines for the generation
10 of power for the propulsion of motor vehicles upon the public highways. The term
11 does not include fuel used for the propulsion or drawing of aircraft or railroad cars or
12 railroad locomotives, ~~however.~~

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

15 (4822) ~~“Prepress preparation material”~~ means all materials used by those in the printing
16 industry including, but not limited to, airbrush color photos, color keys, dies,
17 engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar,
18 plates, proofing materials, tape, transparencies, and veloxes, which are used by
19 printers in the preparation of customer specific layouts or in plates used to fill
20 customers' printing orders, which are eventually sold to a customer, either in their
21 original purchase form or in an altered form, and for which a sales or use tax is
22 demonstrably collected from the printer's customer, if applicable, either separately
23 from the printed materials or as part of the inclusive price therefor. Materials sold to a
24 printer which are used by the printer for the printer's own purposes, and are not sold,
25 either directly or in an altered form, to a customer, are not included within this
26 definition.

27 (23) “Prescription drugs for humans” means a drug which, prior to being dispensed or
28 delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect.
29 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is
30 dispensed in accordance with any written or electronic order dated and signed by a
31 licensed practitioner of the healing arts, or given orally by a practitioner and
32 immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy

1 intern, specifying the name and any required information of the patient for whom the
2 medicine, drug or poison is offered and directions, if any, to be placed on the label.

3 (24) "Price" or "purchase price" means the aggregate value measured in currency paid or
4 delivered or promised to be paid or delivered in consummation of a sale, without any
5 discount from the price on account of the cost of materials used, labor or service
6 cost, and exclusive of any direct tax imposed by the federal government or by this
7 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 same time and
9 place of the exchange, if: (1) such exchanged property is to be sold thereafter in the
10 usual course of the retailer's business, or (2) such exchanged property is a vehicle
11 and is exchanged for another vehicle and both vehicles are subject to licensing,
12 registration, or certification under the laws of this state, including, but not limited to,
13 vehicles operating upon public highways, off-highway recreation vehicles, watercraft,
14 and aircraft. Any money or other consideration paid over and above the value of the
15 exchanged property is subject to tax.

16 a. Price or purchase price includes:

- 17 1. The amount of money received or due in cash and credits.
- 18 2. Property at fair market value taken in exchange but not for resale in the
19 usual course of the retailer's business.
- 20 3. Any consideration valued in money, whereby the manufacturer or
21 someone else reimburses the retailer for part of the purchase price and
22 other media of exchange.
- 23 4. The total price charged on credit sales including finance charges which
24 are not separately stated at the time of sale. An amount charged as
25 interest on the unpaid balance of the purchase price is not part of the
26 purchase price unless the amount added to the purchase price is
27 included in the principal amount of a promissory note; except the
28 interest or carrying charge set out separately from the unpaid balance
29 of the purchase price on the face of the note is not part of the purchase
30 price. An amount charged for insurance on the property sold and
31 separately stated at the time of sale is not part of the purchase price.

1 5. Installation, applying, remodeling or repairing the property, delivery and
2 wheeling-in charges included in the purchase price and not separately
3 stated.

4 6. Transportation and other charges to effect delivery of tangible personal
5 property to the purchaser.

6 7. Indirect federal manufacturers' excise taxes, such as taxes on
7 automobiles, tires and floor stock.

8 8. The gross purchase price of articles sold after manufacturing or after
9 having been made to order, including the gross value of all the
10 materials used, labor and service performed and the profit thereon.

11 b. Price or purchase price shall not include:

12 1. Any sales or use tax imposed by the State of Colorado or by any
13 political subdivision thereof.

14 2. The fair market value of property exchanged if such property is to be
15 sold thereafter in the retailers' usual course of business. This is not
16 limited to exchanges in Colorado. Out of state trade-ins are an
17 allowable adjustment to the purchase price.

18 3. Discounts from the original price if such discount and the
19 corresponding decrease in sales tax due is actually passed on to the
20 purchaser, and the seller is not reimbursed for the discount by the
21 manufacturer or someone else. An anticipated discount to be allowed
22 for payment on or before a given date is not an allowable adjustment to
23 the price in reporting gross sales.

24 (1925) "Prosthetic devices for humans" means any artificial limb, part, device or appliance
25 for human use which aids or replaces a body part or aids or replaces a bodily
26 function; is designed, manufactured, altered or adjusted to fit a particular individual
27 patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic
28 devices for humans include, but are not limited to, prescribed auditory, ophthalmic or
29 ocular, cardiac, dental or orthopedic devices or appliances, oxygen concentrators
30 and oxygen with related accessories.

1 ~~(20) Purchase price or price means the aggregate value measured in currency paid or~~
2 ~~delivered or promised to be paid or delivered in consummation of a sale, without any~~
3 ~~discount from the price on account of the cost of the property sold, cost of materials~~
4 ~~used, labor or service cost, transportation or delivery charges, or any other expense~~
5 ~~whatsoever; and provided that when articles of tangible personal property are sold by~~
6 ~~the manufacturer after manufacture or after having been made to order, the gross~~
7 ~~value of all materials, labor and services, inclusive of the profit thereon, shall be~~
8 ~~included in the purchase price; but said price shall be exclusive of any direct tax~~
9 ~~imposed by the federal government, by the state or by this article; and in the case of~~
10 ~~all retail sales involving the exchange of property, also exclusive of the fair market~~
11 ~~value of the property exchanged at the time and place of exchange; provided,~~
12 ~~however, that such exchanged property is to be sold thereafter in the usual course of~~
13 ~~the retailer's business. "Price" and "purchase price" shall not include the following:~~
14 ~~a. The consideration received for labor or services used in installing, applying,~~
15 ~~remodeling or repairing the property sold if the consideration for such services~~
16 ~~is separately stated from the consideration received for the tangible personal~~
17 ~~property in the retail sale;~~
18 ~~b. The amount paid by any purchaser as, or in the nature of, interest or finance~~
19 ~~charges on account of credit extended in connection with the sale of any~~
20 ~~tangible personal property if the interest or finance charges are separately~~
21 ~~stated from the consideration received for the tangible personal property~~
22 ~~transferred in the retail sale.~~

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

26 (26) "Purchase" or "sale" means the acquisition for any consideration by any person of
27 taxable tangible personal property, products, services.

- 28 a. These terms include capital leases, installment and credit sales, and property
29 and services acquired by:
30 1. Transfer, either conditionally or absolutely, of title or possession or both
31 to taxable tangible personal property, products, or services;

- 1 2. A lease, lease-purchase agreement, rental or grant of a license,
2 including royalty agreements, to use taxable tangible personal property,
3 products, or services;
- 4 3. Performance of taxable services; or
- 5 4. Barter or exchange for other taxable tangible personal property,
6 products, or services.

7 b. The terms purchase and sale do not include:

- 8 1. A division of partnership assets among the partners according to their
9 interests in the partnership;
- 10 2. The transfer of assets of shareholders in the formation or dissolution of
11 professional corporations, if no consideration including, but not limited
12 to, the assumption of a liability is paid for the transfer of assets;
- 13 3. The dissolution and the pro rata distribution of the corporation's assets
14 to its stockholders, if no consideration including, but not limited to, the
15 assumption of a liability is paid for the transfer of assets;
- 16 4. A transfer of a partnership or limited liability company interest;
- 17 5. The transfer of assets to a commencing or existing partnership or
18 limited liability company, if no consideration including, but not limited to,
19 the assumption of a liability is paid for the transfer of assets;
- 20 6. The repossession of personal property by a chattel mortgage holder or
21 foreclosure by a lienholder;

22 (2427) "Purchaser" shall mean any person to whom a taxable service has been rendered or
23 who shall have purchased or hired at retail tangible personal property.

24 (2228) "Rail carrier" means "rail carrier" as defined in Section 10102 of Title 49 of the United
25 States Code as of October 10, 2013, and as it may be amended hereafter.

26 (2329) "Rail carrier part" means any tangible personal property that is originally designed
27 and intended to be permanently affixed or attached as a component part of a
28 locomotive or rail car used by a rail carrier.

29 (2430) "Retail sale" means any sale, ~~as defined in this section,~~ except a wholesale sale.

1 ~~(25) Retailer or vendor means any person selling, leasing, renting or granting a license to~~
2 ~~use tangible personal property or services at retail. Retailer or vendor shall include,~~
3 ~~but is not limited to, any:~~

4 a. ~~Auctioneer;~~

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

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

17 (31) "Retailer" or "vendor means" any person selling, leasing, renting, or granting a license
18 to use tangible personal property, products, or services at retail. Retailer shall
19 include, but is not limited to, any: (1) auctioneer; (2) salesperson, representative,
20 peddler or canvasser, who makes sales as a direct or indirect agent of or obtains
21 such property or services sold from a dealer, distributor, supervisor or employer; and
22 (3) charitable corporation or governmental entity which makes sales of tangible
23 personal property to the public, notwithstanding the fact that the merchandise sold
24 may have been acquired by gift or donation or that the proceeds are to be used for
25 charitable or governmental purposes.

26 ~~(26) Sale or purchase or sale and purchase includes installment and credit purchases and~~
27 ~~sales and the exchange of property or services that are taxable under the terms of~~
28 ~~this article as well as the purchase and sale thereof for money; and every transaction~~
29 ~~conditional or otherwise, based upon consideration constitutes a sale. The term~~
30 ~~"sale," "purchase," or "sale and purchase" includes transactions whereby the~~
31 ~~acquisition of tangible personal property was effected by (a) the transfer, conditionally~~

1 ~~or absolutely, of title or possession or both of the tangible personal property; or (b) a~~
2 ~~lease, hire or rental of, or a grant of a license to use (including royalty agreements)~~
3 ~~tangible personal property. The terms "sale" and "purchase" and "sale and purchase"~~
4 ~~do not include:~~

5 ~~a.—— A division of partnership assets among the partners according to their interests~~
6 ~~in the partnership;~~

7 ~~b.—— The transfer of assets of shareholders in the formation or dissolution of~~
8 ~~professional corporations if no consideration including, but not limited to, the~~
9 ~~assumption of a liability is paid for the transfer of assets;~~

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

13 ~~d.—— A transfer of a partnership interest;~~

14 ~~e.—— The transfer of assets to a commencing or existing partnership if no~~
15 ~~consideration including, but not limited to, the assumption of a liability is paid~~
16 ~~for the transfer of assets;~~

17 ~~f.—— The repossession of personal property by a chattel mortgage holder or~~
18 ~~foreclosure by a lienholder.~~

19 (32) "Software as a service" means software that is rented, leased or subscribed to from a
20 provider and used at the consumer's location, including but not limited to
21 applications, systems or programs.

22 (33) "Software license fee" means a fee charged for the right to use, access, or maintain
23 software programs.

24 (34) "Software maintenance agreement" means an agreement, typically with a software
25 provider, that may include (1) provisions to maintain the right to use the software; (2)
26 provisions for software upgrades including code updates, version updates, code fix
27 modifications, enhancements, and added or new functional capabilities loaded into
28 existing software; or (3) technical support.

29 (35) "Software program" means a sequence of instructions that can be measured,
30 interpreted and executed by an electronic device (e.g. a computer, tablets, smart

1 phones) regardless of the means by which it is accessed or the medium of
2 conveyance. Software program includes: (1) custom software program, which is a
3 software program prepared to the special order or specifications of a single customer;
4 (2) pre-written software program, which is a software program prepared for sale or
5 license to multiple users, and not to the special order or specifications of a single
6 customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf
7 (“COTS”), “mass produced” or “standardized;” (3) modified software, which means
8 pre-written software that is altered or enhanced by someone other than the purchaser
9 to create a program for a particular user; and (4) the generic term “software,”
10 “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and
11 any items which add or extend functionality to existing software programs.

12 (36) “Sound system services” means the provision of broadcast or pre-recorded audio
13 programming to a building or portion thereof. Such term does not include installation
14 of sound systems where the entire system becomes the property of the building
15 owner or the sound system service is for presentation of live performances.

16 (2737) “Special fuel” means kerosene oil, kerosene distillate, diesel fuel, all liquefied
17 petroleum gases, and all combustible gases and liquids for use in the generation of
18 power for propulsion of motor vehicles upon the public highways. The term does not
19 include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad
20 locomotives, however.

21 (2838) “Storage” means any keeping or retention of, or exercise of dominion or control over,
22 or possession for any length of time of tangible personal property under a lease or
23 when purchased at retail within or without the city. tangible personal property not
24 while in transit but on a stand still basis for future use when leased, rented or
25 purchased at retail from sources either within or without the City from any person or
26 vendor.

27 (2939) “Tangible personal property” means ~~corporeal personal property.~~ personal property
28 that can be one or more of the following: seen, weighed, measured, felt, touched,
29 stored, transported, exchanged, or that is in any other manner perceptible to the
30 senses.

31 (30) ~~Tax~~ means either the tax payable by the user, consumer, distributor, storekeeper or

1 purchaser of tangible personal property or of a service subject to the tax imposed by
2 this article, or the aggregate amount of taxes due from the vendor of such
3 commodities or services during the period for which the vendor is required by this
4 article to report his collections, as the context may require.

5 ~~(31) Tax deficiency or deficiency means any amount of tax, penalty or interest that is not~~
6 ~~reported, returned or paid on or before the date that the return and payment of the~~
7 ~~tax are required under the terms of this article.~~

8 (40) "Tax deficiency" or "deficiency" means any amount of tax, penalty, interest, or other
9 fee that is not reported and/or not paid on or before the date that any return or
10 payment of the tax is required under the terms of this article.

11 (41) "Taxable sales" means gross sales less any exemptions and deductions specified in
12 this chapter.

13 ~~(32) Taxable services or services means services subject to tax pursuant to this article.~~

14 (42) "Taxable service" means any service subject to tax pursuant to this article.

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

27 (43) "Telecommunications service" means the service of which the object is the
28 transmission of any two-way interactive electronic or electromagnetic
29 communications including but not limited to voice, image, data and any other
30 information, by the use of any means but not limited to wire, cable, fiber optical cable,
31 microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of

1 such media, including any form of mobile two-way communication.

2 (44) "Television and entertainment services" means audio or visual content, that can be
3 transmitted electronically by any means, for which a charge is imposed.

4 (3445) "Use" means the exercise, for any length of time, by any person within the city of any
5 right, power or dominion over tangible personal property, products, or services either
6 under a lease, or pursuant to a transaction whereby tangible personal property
7 together with the services of an operator thereof, is furnished for another person,
8 irrespective of the fact that during all times that the said property is so furnished, the
9 control of the operation of the same remains in the person so providing the said
10 property, or pursuant to a purchase at retail either within or without the city. when
11 rented, leased or purchased at retail from sources either within or without the city
12 from any person or vendor or used in the performance of a contract in the city
13 whether such tangible personal property is owned or not owned by the taxpayer. Use
14 also includes the withdrawal of items from inventory for consumption.

15 ~~(35)~~ *Wholesale sale* means:

16 a. ~~A sale by wholesalers to licensed retail merchants, jobbers, dealers or other~~
17 ~~wholesalers for resale, and does not include (i) a sale by wholesalers to users~~
18 ~~or consumers not for resale; (ii) the leasing, hiring or renting of, or granting of~~
19 ~~a license to use (including royalty agreements) tangible personal property to a~~
20 ~~user or consumer thereof; (iii) sales of returnable containers to manufacturers,~~
21 ~~compounders, wholesalers, retailers, jobbers, packagers, distributors or~~
22 ~~bottlers; (iv) sales of tangible personal property to persons for resale when~~
23 ~~there is a likelihood that the city will otherwise lose tax revenues due to the~~
24 ~~difficulty of policing the business operations because:~~

- 25 1. ~~of the frequent replacement of independent contractors or agents;~~
- 26 2. ~~of the lack of a place of business in which to display a city retail sales~~
27 ~~license;~~
- 28 3. ~~of the lack of a place of business in which to keep records;~~
- 29 4. ~~of the lack of adequate records;~~
- 30 5. ~~the persons engaged in selling, or in the chain of selling events, are~~

1 minors or transients; or

2 ~~6. the persons selling, or in the chain of events leading to sale, are~~
3 ~~engaged essentially in providing services in transferring tangible~~
4 ~~personal property;~~

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

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

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

26 ~~Provided, however, that skin casing or cellulose casing or sales of and~~
27 ~~purchases of edible fryer oil used as a cooking medium which enters into the~~
28 ~~processing of food products intended to be sold at retail for human~~
29 ~~consumption shall be exempt from taxation when such skin casing or cellulose~~
30 ~~casing or edible fryer oil used as a cooking medium, which does not become~~
31 ~~an integral or constituent part of a food product, is directly used, consumed,~~

1 ~~dissipated or destroyed to the extent that it is rendered unfit for further use in~~
2 ~~the processing of a food product.~~

3 (46) "Wholesale sale" means a sale by a wholesaler to a retailer, jobber, dealer, or other
4 wholesaler for resale and does not include a sale by a wholesaler to a user or
5 consumer not for resale; latter types of sales shall be deemed to be retail sales and
6 shall be subject to the provisions of this article.

7 ~~(36) Wholesaler means a person doing a regularly organized wholesale or jobbing~~
8 ~~business and selling to licensed retailers, merchants, jobbers, dealers or other~~
9 ~~wholesalers, for the purpose of resale.~~

10 (47) "Wholesaler" means any person doing an organized wholesale or jobbing business
11 and selling to a retailer, jobber, dealer, or other wholesaler, for the purpose of resale,
12 and not for storage, use, consumption, or distribution.

13 **Section 15.** That section 53-96 of the Denver Revised Municipal Code is hereby amended
14 by adding the underlined language and deleting the stricken language to read and be read as follows:

15 **Sec. 53-96. - Imposition of tax.**

16 There is levied and there shall be collected and paid a tax in the amount stated in this
17 article, by every person exercising the taxable privilege of storing, using, distributing or consuming
18 in the city ~~a service subject to the provisions of this article or any article of tangible personal~~
19 property, or a product or service subject to the provisions of the is article, purchased at retail, for
20 said exercise of said privilege, as follows:

- 21 (1) On the purchase price ~~paid or charged~~ upon all ~~sales and purchases~~ and sales of
22 tangible personal property.
- 23 (2) In the case of retail sales involving the exchange of property, on the purchase price
24 ~~paid or charged~~, including the fair market value of the property exchanged at the time
25 and place of the exchange, excluding, however, from the consideration or purchase
26 price the fair market value of the exchanged property if such exchanged property is to
27 be sold thereafter in the usual course of the retailer's business.
- 28 (3) Upon the purchase price ~~or charge~~ for telephone and telecommunications services,
29 including in addition to audio and video transmission and reception, other two-way
30 electronic or electromagnetic wave transmissions, receptions or communications of

1 any sort, by or through any medium, whether such services are furnished by public or
2 private corporations or associations, that, except as otherwise provided by this article
3 for mobile telecommunication services, both originate in and are charged to a
4 telephone number or an account located within the city, excepting, however, monthly
5 or other periodic usage charges that represent varying amounts billed to accounts for
6 a subscriber's actual use of interstate services provided by a long-distance
7 telecommunications company and charged to the subscriber by or on behalf of a
8 long-distance telecommunications company.

- 9 (4) Upon the purchase price ~~or charge~~ for coal, petroleum, liquid petroleum, electric,
10 steam and natural gas services, and any other products used for energy-producing
11 purposes, whether furnished by municipal, public or private corporations or
12 associations, furnished and sold for domestic, commercial or industrial consumption
13 and not for resale.
- 14 (5) Upon the purchase price ~~or charge~~ for the furnishing or sale to customers within the
15 city of informational or entertainment service wherein the relay or transmission of
16 electromagnetic waves through any medium, tangible or intangible, including cable,
17 glass fiber and ambient air, is necessary for the service to be received, including, but
18 not limited to, digital products, internet subscription services, sound system services,
19 and television and entertainment services, ~~pay television,~~ excepting however,
20 telephone and telecommunications services described in section 53-25(3) and
21 television, cinema or similar programming provided at a theater or similar place open
22 to the public.
- 23 (6) Upon the purchase price ~~or charge~~ for digital products, software programs, software
24 as a service, software license fees, and software maintenance agreements. ~~data~~
25 ~~processing equipment and data processing programs.~~

26 **Section 16.** That section 53-97 of the Denver Revised Municipal Code is hereby amended
27 by adding the underlined language and deleting the stricken language to read and be read as follows:

28 **Sec. 53-97. - Exemptions.**

29 There shall be exempt from taxation under the provisions of this article the following:

- 30 (1) All purchases by or sales to the United States government, to the state, its
31 departments and institutions, and the political subdivisions thereof only when
32 purchased in their governmental capacities.

- 1 (2) All purchases by or sales made to religious or charitable corporations when
2 purchased for their regular religious or charitable functions and activities.
- 3 (3) All purchases or sales of cigarettes.
- 4 (4) All purchases or sales of motor fuel and special fuel ~~as defined in this article~~.
- 5 (5) All purchases or sales ~~and purchases~~ of ~~meat~~, cattle, sheep, lambs, swine and goats;
6 all sales of mares and stallions for breeding purposes.
- 7 (6) All purchases or sales ~~and purchases~~ of feed for livestock or poultry and all sales of
8 seeds to farmers, ranchers, truck farmers, florists and horticulturists who sell the
9 crops resulting from the propagation of such seeds or use such crops as feed for
10 livestock or poultry.
- 11 (7) ~~The sale and purchase~~ All purchases or sales of medical supplies.
- 12 (8) ~~The sale and purchase~~ All purchase or sales of food.
- 13 (9) ~~Sales~~ All purchases or sales of tangible personal property purchased outside the city
14 for use, storage, distribution or consumption outside the city by a nonresident of the
15 city while the property is temporarily within the city for the purchaser's own personal
16 use, storage or consumption.
- 17 (10) ~~Sales~~ All purchases or sales of tangible personal property to a natural gas and
18 electric utility or a telephone utility that is not used, consumed or distributed in the city
19 but is for use, consumption or distribution in its business operations outside the city
20 even though the property is delivered and temporarily stored within the city.
- 21 (11) All purchases or sales which the city is prohibited from taxing under the Constitution
22 or laws of the United States or the Constitution of the state.
- 23 (12) ~~Sales~~ All purchases or sales of automotive vehicles as defined in this article that are
24 registered and required by state law to be registered outside the city.
- 25 (13) All purchases or sales of farm ~~machinery as defined in this article~~ equipment used
26 directly for plowing, planting, cultivating or harvesting of crops.
- 27 (14) ~~Sales~~ All purchases or sales of tangible personal property, products, and services
28 taxable under the city retail sales tax article, article II of this chapter, upon which a
29 sales tax has been paid to the city.

1 (15) ~~The sale~~ All purchases or sales of construction ~~and building~~ materials for their
2 storage in the city; but any use, consumption or distribution beyond storage of the
3 construction and building materials in the city shall be taxable.

4 (16) ~~Sales~~ All purchases or sales of machinery, tools and equipment, including
5 replacement parts, to a transportation utility to be used by the utility in the operation
6 of an equipment maintenance facility and at an industrial building:

- 7 a. That is located in the city within an enterprise zone designated as such
8 pursuant to state law;
- 9 b. That contains at least one million (1,000,000) square feet of enclosed, useable
10 floor space on a single level;
- 11 c. That serves as a regular place of work and for reporting for duty for at least
12 two thousand (2,000) employees in the third year of operations of the
13 maintenance facility and continually thereafter; and
- 14 d. That is operated by an interstate carrier for hire primarily for maintaining,
15 rebuilding or repairing equipment moving in interstate commerce.

16 This exemption may be applicable to the first and second years of operations at the
17 industrial building provided that the utility establishes a reserve account for the tax for
18 its return to the city at the end of the third year of operations should less than two
19 thousand (2,000) employees be employed at the facility in said third year.

20 (17) ~~Sales~~ All purchases or sales of construction ~~and building~~ materials for use in the
21 construction, reconstruction or remodeling of a new industrial building of a
22 transportation utility to be used by the utility for an equipment maintenance facility:

- 23 a. That is located in the city within an enterprise zone designated as such
24 pursuant to state law;
- 25 b. That is designed to contain at least one million (1,000,000) square feet of
26 enclosed, useable floor space on a single level;
- 27 c. That serves as a regular place of work and for reporting for duty for at least
28 two thousand (2,000) employees in the third year of operations of the
29 maintenance facility and continually thereafter; and
- 30 d. That is operated by an interstate carrier for hire primarily for maintaining,

1 rebuilding or repairing equipment moving in interstate commerce.

2 This exemption may be applicable to the design and construction phases of the new
3 facility and to the first and second years of operations at the facility provided that the
4 utility establishes a reserve account for the tax for its return to the city at the end of
5 the third year of operations should less than two thousand (2,000) employees be
6 employed at the facility in said third year.

7 (18) All sales of prepress preparation materials ~~as defined in this article.~~

8 (19) ~~Sales~~ All purchases or sales of tangible personal property (excepting (a) construction
9 equipment, tools and machinery; (b) construction ~~and building materials as defined in~~
10 ~~this article~~; and (c) vehicles that are capable of moving themselves, or of being
11 moved from place to place upon wheels or endless tracks, excluding bicycles and
12 other devices moved by human power and excluding "farm ~~machinery equipment~~"
13 used directly for plowing, planting, cultivating or harvesting of crops ~~as defined in this~~
14 ~~article~~) that are first used, stored, consumed or distributed within the city more than
15 one (1) year after the most recent sale of the property if, within the year following
16 such sale, the property has been used in a significant way outside the ~~city~~ City and
17 ~~County of Denver~~ for the principal purpose for which it was most recently purchased.

18 (20) ~~Sales~~ All purchase or sales made to, billed directly to, and paid for directly by,
19 qualified hospital organizations (as defined in paragraph ~~(a)~~ a. of this subsection
20 (20)), provided that the property or service purchased by the qualified hospital
21 organization is employed in furtherance of an exempt function (as defined in
22 paragraph ~~(b)~~ b. of this subsection (20)).

23 ~~(a)~~ a. For purposes of this subsection (20), a "qualified hospital organization" is any
24 of the following:

25 ~~(1)~~ 1. An organization that is exempt from federal income tax under section
26 115 or section 501(c)(3) of the United States Internal Revenue Code of
27 1986, as amended, but only if the organization holds a license to
28 operate a "general hospital" for people issued pursuant to sections 25-
29 3-101 and 25-3-102, Colorado Revised Statutes (2000), as amended,
30 including any successor provisions to those sections, and operates a
31 general hospital;

1 ~~(2)~~2. A corporation or trust that:

2 ~~(a)~~a. Is exempt from federal income tax under section 501(c)(3) of the
3 United States Internal Revenue Code of 1986, as amended;

4 ~~(b)~~b. Owns or employs personal property or improvements that are
5 used in the operations of one (1) or more organizations
6 described in subparagraph ~~(a)(4)~~ a.1. of this subsection (20); and

7 ~~(c)~~c. Either (i) directly controls, or is controlled by, one (1) or more
8 organizations described in subparagraph ~~(a)(4)~~ a.1. of this
9 subsection (20), (ii) is controlled by a management organization
10 as defined in subparagraph ~~(a)(3)~~ a.3. of this subsection (20) in
11 common with one (1) or more organizations described in
12 subparagraph ~~(a)(4)~~ a.1. of this subsection (20), or (iii) owns a
13 hospital that is licensed to operate as a "general hospital" for
14 people pursuant to sections 25-3-101 and 25-3-102, Colorado
15 Revised Statutes (2000), as amended, including any successor
16 provisions to those sections, and that is operated by an
17 organization described in subparagraph ~~(a)(4)~~ a.1. of this
18 subsection (20).

19 ~~(3)~~3. An organization that is exempt from federal income tax under section
20 501(c)(3) of the United States Internal Revenue Code of 1986, as
21 amended, and a principal function of which is to manage the property or
22 operations, or both, of one (1) or more organizations described in
23 subparagraphs ~~(4)~~ 1. or ~~(2)~~ 2. of this paragraph ~~(a)~~ a.; and

24 (4) A partnership, limited partnership, limited liability limited partnership,
25 limited liability partnership, limited liability company, or joint venture if all
26 of the partners, members, joint venturers or other participants in such
27 partnership, limited partnership, limited liability limited partnership,
28 limited liability partnership, limited liability company or joint venture are
29 organizations described in subparagraphs ~~(4)~~, ~~(2)~~ or ~~(3)~~ 1., 2., or 3. of
30 this paragraph ~~(a)~~ a.

31 ~~(b)~~b. For purposes of this subsection (20):

1 ~~(1)~~1. Except as provided in subparagraph ~~(3)~~ 3. of this paragraph ~~(b)~~ b.,
2 "employed in furtherance of an exempt function" means employed by a
3 qualified hospital organization in an activity from which none of the
4 proceeds are treated as unrelated business income.

5 ~~(2)~~2. "Unrelated business income" means gross income derived from any
6 unrelated trade or business within the meaning of section 512 of the
7 United States Internal Revenue Code of 1986, as amended.

8 ~~(3)~~3. If the ~~purchase and~~ sale of any property or service would be exempt
9 under this subsection (20) but for the fact that the property or service is
10 employed in an activity from which a portion of the proceeds is treated
11 as unrelated business income, the manager of finance is authorized to
12 approve written formulas or methodologies (including formulas or
13 methodologies of individual qualified hospital organizations) as may be
14 appropriate and reasonable to determine, based on the evidence
15 available, the percentage of the proceeds from such activity that is not
16 treated as unrelated business income. This calculated percentage shall
17 be the percentage of the cost of such property or service that will be
18 exempt under this subsection (20). The manager of finance may
19 condition approval of formulas and methodologies on receipt of such
20 information as is reasonably deemed necessary for proper
21 implementation of such formulas and methodologies.

22 (21) ~~The sale~~ All purchases or sales of aircraft to an airline company that is used in
23 interstate commerce by the airline company.

24 (22) The use of tangible personal property which was originally purchased at wholesale
25 and which is subsequently removed from inventory or taken out of a manufacturing or
26 compounding process and donated without consideration to any of the following:

27 ~~(a)~~a. The United States government, to the state, its departments and institutions
28 and the political subdivisions thereof; or

29 ~~(b)~~b. Any organization which has been certified as a not-for-profit organization
30 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,
31 and which is also operated as a Colorado nonprofit corporation.

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Section 17. That section 53-98 of the Denver Revised Municipal Code is hereby amended by adding the underlined language and deleting the stricken language to read and be read as follows:

Sec. 53-98. - Retailers to collect tax.

(a) Tax rates. A tax of three and sixty-five one-hundredths (3.65) percent is imposed and levied and there shall be collected and paid a tax upon the exercise of the privilege of storing, using, distributing or consuming in the city ~~a service subject to the provisions of this article or any item of tangible personal property,~~ or a product or a service subject to the provisions of this article, purchased at retail, or deemed to be purchased at retail, except ~~those commodities~~ tangible personal property, or a product or a services specified in subsection (b) of this section. In order to avoid amounts that are fractions of pennies, taxpayers shall use a rounding procedure approved by the manager when computing the tax.

On those taxable uses, consumptions, distributions and storages of ~~commodities~~ tangible personal property, products, or services specified in subsection (b) of this section, there is levied and imposed upon the privilege of storing, using, distributing or consuming in the city a tax in accordance with the rates set forth therein.

- (b) Special rates.
- (1) Special note for aviation and railway fuel. Any fuel in the form of liquid or gas that is prepared, advertised, offered for sale, sold for use and used or commercially usable for the generation of power for the propulsion or drawing of aircraft, railroad cars or railroad locomotives shall be taxed at the rate of four cents (\$0.04) for each gallon used, consumed, stored or distributed. In order to avoid amounts that are fractions of pennies, taxpayers shall use a rounding procedure approved by the manager when computing the tax.
 - (2) Special note for short-term rentals of automotive vehicles. Automotive vehicles as defined in this article, when they are for any term of thirty (30) days or less hired for use, rented, leased or transferred under a grant of a license to use, shall be taxed at the rate of seven and one quarter (7.25) percent of the rentals paid or purchase price. In order to avoid amounts that are fractions of pennies, taxpayers shall use a rounding procedure approved by the manager when computing the tax. One and three-quarters (1.75) percent of such tax shall be used to pay debt relating to and costs operating, maintaining and improving the

1 National Western Center Campus and the Colorado Convention Center and
2 other tourism related projects.

3 (3) Special note for prepared food and beverages. Food and beverages not
4 exempted from taxation under section 53-26(8) of the city retail sales tax article
5 shall be taxed under this article at the rate of four (4) percent of the purchase
6 price. In order to avoid amounts that are fractions of pennies, taxpayers shall
7 use a rounding procedure approved by the manager when computing the tax.

8 (c) Tax to be shown as separate item. Except as provided in this section, retailers shall
9 add the tax imposed, or the average equivalent thereof, to the purchase price, showing
10 such tax as a separate and distinctive item, and when added, such tax shall constitute
11 a part of such price and shall be a debt from the consumer or user to the retailer until
12 paid, recoverable at law in the same manner as other debts.

13 (d) Vending machine sales. Notwithstanding provisions herein regarding the unlawful
14 assumption or absorption of the tax, any retailer vending items through coin-operated
15 vending machines may include in the purchase price for the vended item the tax levied
16 by this article; but no such retailer shall advertise or hold out to the public in any
17 manner, directly or indirectly, that such tax is not included as a part of the sales price
18 to the consumer.

19 (e) Affixing of tangible personal property on realty. Every person who attaches and affixes
20 to realty or the improvements and structures located thereon, situated within the city,
21 any article of tangible personal property taxable hereunder, acquired from sources
22 without the city and who has not paid the tax imposed by this article thereon, to a
23 vendor required or authorized to collect the same, shall monthly make a return and pay
24 the tax due to the manager on or before the twentieth day of each calendar month
25 thereafter. The full amount of such unpaid taxes, arising as aforesaid, together with
26 interest and penalties as hereinafter provided shall constitute a first and paramount
27 lien upon such realty and the improvements located thereon, so benefited by the
28 attaching and affixing of such articles of tangible personal property thereto, which lien
29 shall have precedence over all other liens of whatsoever kind or nature, except as to
30 liens for general taxes created by state law, and except as to preexisting claims or liens
31 of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall
32 have attached prior to the filing of the notice of lien by the manager as hereinafter
33 provided; and the manager is hereby authorized to file a notice of lien therefor against

1 said benefited realty and the improvements and structures thereon with the clerk and
2 recorder of the city; and upon full payment of the amount of taxes, interest and
3 penalties on account thereof, the manager may release and discharge said lien. Unless
4 so released and discharged, said lien shall continue for six (6) years from the date said
5 notice of lien is filed, notwithstanding the general limitation-of-action clause contained
6 in this article.

7 (f) Outside-city contracts, deliveries, etc. Every vendor required or permitted to collect the
8 tax shall collect the tax imposed by the provisions of this article, notwithstanding the
9 following:

10 (1) That the purchaser's order or contract of sale is delivered, mailed or otherwise
11 transmitted by the purchaser to the vendor at a point outside Denver as a result
12 of solicitation by the vendor through the medium of a catalog or other written
13 advertisement; or

14 (2) That the purchaser's order or contract of sale is made or closed by acceptance
15 or approval outside of the city or before said tangible personal property enters
16 the city; or

17 (3) That the purchaser's order or contract of sale provides that said property shall
18 be, or it is in fact, procured or manufactured at a point outside the city and
19 shipped directly to the purchaser from the point of origin; or

20 (4) That said property is mailed to the purchaser in the city from a point outside the
21 city or delivered to a carrier at a point outside the city F.O.B., or otherwise, and
22 directed to the vendor in the city, regardless of whether the cost of transportation
23 is paid by the vendor or by the purchaser; or

24 (5) That said property is delivered directly to the purchaser at a point outside the
25 city, if it is intended to be brought to the city for use, storage or consumption in
26 the city.

27 (g) Collection mandatory. Every vendor engaging in business in the city and selling
28 tangible personal property, or a product or a service ~~or services~~ taxable hereunder
29 shall collect, and is required to collect, the tax imposed and levied by this article from
30 the purchaser.

31 (h) Retailer as collecting agent. The retailer shall be entitled as collecting agent of the city
32 to apply and credit the amount of his collections of the tax levied by this article against
33 the amount required to be paid over by him under the provisions of section 53-99,

1 remitting any excess of collections over the amount required by section 53-99 of this
2 Code, and rounding to the nearest whole dollar as provided in section 53-99, to the
3 manager in the retailer's next periodic tax return.

4 (i) Consumer returns due, generally. Every person who is engaged in business in the city
5 and who purchases ~~services or~~ tangible personal property, a product or service taxable
6 hereunder for use, storage or consumption in the city in connection with the business,
7 who has not paid the tax imposed by this article thereon to a vendor required or
8 authorized to collect the same, shall, monthly, make a return of and pay over the tax
9 due to the manager, on or before the twentieth day of each calendar month thereafter.
10 The amount of the consumer use tax may be subject to reduction as provided by
11 section 53-92 for previously paid sales or use taxes.

12 (j) Retailer not to benefit. No retailer shall gain any benefit from the collection or payment
13 of the tax, except as permitted by this article, and the use of the rounding procedure
14 approved by the manager shall not relieve the retailer from liability for payment of the
15 amount required by section 53-99.

16 (k) Use tax increment to fund the Denver preschool program. In addition to the use tax
17 otherwise imposed by this section, a tax of fifteen one-hundredths of one (.15) percent
18 shall be paid on all taxable uses, consumptions, distributions, and storages of
19 ~~commodities~~ tangible personal property, products, and services, except on
20 ~~commodities~~ tangible personal property, products, and services specified in subsection
21 (b) of this section, beginning January 1, 2015 and expiring December 31, 2026. The
22 revenue from such additional tax shall be used for the sole purpose of funding the
23 Denver preschool program pursuant to article III of chapter 11.

24 **Section 18.** That subsection 53-99(a) of the Denver Revised Municipal Code is hereby
25 amended by adding the underlined language and deleting the stricken language to read and be read
26 as follows:

27 **Sec. 53-99. - Retailer responsible for payment of tax.**

28 (a) Amount. Every retailer shall, irrespective of other provisions of this article, be liable and
29 responsible for the payment of an amount equivalent to three and sixty-five one-
30 hundredths (3.65) percent of ~~gross~~ taxable sales made by him of ~~services and~~ tangible
31 personal property, products, and services ~~specified in this article~~, except:

32 **Section 19.** That subsection 53-118(f) of the Denver Revised Municipal Code is hereby
33 amended by adding the underlined language and deleting the stricken language to read and be read

1 as follows:

2 (f) Burden of proof. The burden of proof that storage, use, distribution, or consumption of
3 tangible personal property, products, or services upon which refunds of taxes are
4 claimed, or for which modifications or cancellations of assessments are sought, are
5 exempt from or not subject to taxation under this article shall be on the taxpayer and
6 such proof shall be by a preponderance of evidence.

7 **Section 20.** That section 53-135 of the Denver Revised Municipal Code is hereby amended
8 by adding the underlined language and deleting the stricken language to read and be read as follows:

9 **Sec. 53-135. - License and tax in addition to all others.**

10 The license required and the tax levied by this article shall be in addition to all other licenses
11 required and taxes levied by law except as herein otherwise provided. No delinquency in payment
12 and no violation of this article shall be grounds for the suspension or revocation of any license
13 issued to any person engaged in business ~~within~~ the city by any official of the city under any
14 licensing provisions of the Code or other ordinances, neither shall the same be grounds for the
15 suspension or revocation of any state license issued by any licensing authority pursuant to the
16 statutes of the state.

17 COMMITTEE APPROVAL DATE: May 16, 2017

18 MAYOR-COUNCIL DATE: May 23, 2017

19 PASSED BY THE COUNCIL: _____ June 26, 2017

20 _____ - PRESIDENT
21 APPROVED: Allegra "Happy" Haynes - MAYOR _____ Jun 29, 2017
Allegra "Happy" Haynes (Jun 29, 2017)

22 ATTEST: _____ - CLERK AND RECORDER,
23 EX-OFFICIO CLERK OF THE
24 CITY AND COUNTY OF DENVER

25 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

26 PREPARED BY: Charles Solomon, Assistant City Attorney DATE: June 15, 2017

27 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
28 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
29 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
30 §3.2.6 of the Charter.

31
32 Kristin M. Bronson, Denver City Attorney

33
34 BY: [Signature], Assistant City Attorney DATE: _____ Jun 15, 2017