

## CHAPTER 2

**MUNICIPAL NONPROPERTY SALES TAX**

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3-2-1: **FINDINGS:** The city council hereby finds that the city has a population not in excess of ten thousand (10,000) according to the most recent census within the state of Idaho, and is a city that derives the major portion of its economic well being from businesses catering to recreational needs and meeting needs of people traveling to the city for an extended period of time, and that said visitors and travelers require services of the city and place an undue burden upon city taxpayers. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

3-2-2: **DEFINITIONS:**

**CITY:** Either the municipal corporation of the city of Driggs, Idaho, or within the corporate limits of the city of Driggs, Idaho, depending on context.

- PERMIT:** The municipal nonproperty sales tax permit that every person making a sale that is taxable under this chapter shall be required to obtain.
- PERSON:** Means and includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, business trust, trust, receiver, trustee, syndicate, cooperative, assignee or any other group or combination acting as a unit.
- PURCHASE:** Means and includes any transfer, rental, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. A transaction whereby the possession of property is transferred but the seller retains the title for security is a purchase. A transfer for a consideration of any publication or of tangible personal property that has been produced, fabricated or printed to the special order of the customer is also a purchase.
- RETAIL SALE; SALE AT RETAIL:** A sale of tangible personal property for any purpose other than the resale of that property in the regular course of business, or lease or rental of that property in the regular course of business where such rental or lease is taxable under Idaho Code section 63-3612(2)(h).
- A. All persons engaged in constructing, altering, repairing or improving real estate are consumers of the materials used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.
- B. The sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.
- C. A sale of tangible personal property that is made by a retailer not physically located within this state or within the city, if the point of

delivery is at a location within the city, is considered a retail sale taxable under this chapter.

RETAILER:

Means and includes:

A. Every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

B. Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

C. Every person making more than two (2) retail sales during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, or every person making fewer sales who holds himself out as engaging in the business of selling such tangible personal property at retail or who sells a self-propelled motor vehicle.

D. When the city clerk determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers or canvassers as agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the city clerk may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for the purpose of this chapter.

E. Persons conducting both contracting and retailing activities must keep separate accounts

for the retail portion of their business and remit tax on the retail portion.

**SALE:**

Means and includes any transfer of title, exchange or barter, conditional or otherwise, in any manner and by any means whatsoever, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, an exchange or barter. "Sale" shall also include:

A. Producing, fabricating, processing, printing or imprinting of tangible personal property, for a consideration, for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting.

B. Furnishing, preparing or serving, for a consideration, food, meals or drinks.

C. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

D. A transfer, for a consideration, of the title, or possession of tangible personal property that has been produced, fabricated or printed to the special order of the customer, or of any publication.

E. Admission charges.

F. Receipts from the use of or the privilege of using tangible personal property or other facilities for recreational purposes.

G. Providing hotel, motel, condominium, tourist home or trailer court accommodations and services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

H. The lease or rental of tangible personal property.

I. Any sale at retail within the city limits.

**SALES PRICE:** Means and includes the total amount for which tangible personal property, including services agreed to be rendered as part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise. For the purposes of this chapter, the "sales price" of a "new manufactured home" or a "modular building" shall be limited to and include only fifty five percent (55%) of the sales price as otherwise defined herein.

**SALES TAX ACT:** The Idaho state sales tax act, Idaho Code section 63-3601, et seq., including subsequent amendments thereto, which is hereby adopted by reference.

**SELLER:** Every person making retail sales to a buyer or consumer, whether as agent, broker or principal.

**TANGIBLE PERSONAL PROPERTY:** Personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses. (Ord. 280-07, 9-18-2007, eff. 1-1-2008; amd. 2010 Code)

**3-2-3: ADMINISTRATION AND ENFORCEMENT OFFICIAL:**

- A. The city clerk shall enforce the provisions of this chapter and may prescribe, adopt and enforce rules and regulations relating to its administration and enforcement. The city clerk may employ qualified auditors for examination of taxpayer books and records, and shall also employ such accountants, investigators, assistants, clerks, and other personnel as necessary for the efficient administration of this chapter, and may delegate authority to its representatives to conduct hearings or perform other duties imposed by this chapter.
- B. The city clerk is hereby authorized and empowered to administer, regulate and collect payment of all nonproperty taxes adopted and

imposed by this chapter. The clerk shall have all of the powers set forth in this chapter, together with those additional powers necessary and proper to carry out the provisions of this chapter. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-4: TAX IMPOSED; EXEMPTIONS:**

- A. The city hereby imposes and shall collect certain nonproperty taxes, as follows: A municipal sales tax of one-half percent ( $\frac{1}{2}\%$ ) on the sales price of all sales within the city that are subject to taxation under this chapter and Idaho Code section 63-3601, et seq., Idaho sales tax act, including subsequent amendments thereto. When the sales price involves a fraction of a dollar, said nonproperty taxes shall be collected on that fractional portion of the price by adding thereto the tax based upon a bracket system. The bracket system for the collection of the one-half percent ( $\frac{1}{2}\%$ ) nonproperty tax shall be as set forth in exhibit A attached to the ordinance codified herein and made a part hereof by reference. The retailer shall calculate the tax upon the entire amount of purchase by the consumer made at a particular time subject to this chapter, and not separately upon each item purchased. The retailer may retain any amount collected under said bracket system that is in excess of the amount of tax for which he is liable to the city during the period as compensation for the work of collecting said tax.
- B. Only those transactions which are exempted from the taxes imposed by the state of Idaho pursuant to the Idaho sales tax act, as that act may be amended, are also exempt from the provisions of this chapter. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-5: DURATION OF TAX:** The nonproperty sales tax authorized and collected under this chapter is hereby imposed for a duration of ten (10) years from the effective date hereof. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-6: PERMIT REQUIREMENTS:**

- A. Permit Required; Application: Every person desiring to engage in or conduct business of retail sales, and/or renting a hotel/motel room, and/or the business of sales as defined in section 3-2-2 of this chapter and is required to remit sales tax to the city shall file with the

city clerk an application for a municipal nonproperty sales tax permit for each place of business, or if the business does not maintain a physical location within the city, for each business entity. Every application for said permit shall be made upon a form prescribed by the city clerk and shall set forth the name under which the applicant transacts or intends to transact business, the location of the business or places of businesses and other such information as the city may require. The application shall be signed by the owner, if he is a natural person; or in the case of an association or partnership, by a member or partner; or in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application.

- B. **Issuance Of Permit; Conditions:** Upon filing an application meeting the requirements set forth in subsection A of this section, the city clerk shall issue to each applicant a permit for each place of business. Issuance of a permit may be subject to additional requirements as set forth in this chapter.
- C. **Contents Of Permit:** On the face of the permit shall be fixed the municipal nonproperty sales tax number which shall be used by the applicant as an identifying number on all filing, payment and correspondence with regard to the nonproperty tax imposed under this chapter.
- D. **Nontransferability Of Permit:** A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein.
- E. **Posting Required:** The permit shall, at all times, be conspicuously displayed at the location for which it was issued.
- F. **Expiration Of Permit:** A permit held by a person who, for a period of twelve (12) consecutive months, reports no sales shall expire automatically upon the city clerk providing written notice of the expiration to the last known address of the person to whom the permit was issued. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-7: RESPONSIBILITY FOR PAYMENT OF TAX:**

- A. Every person with a duty to account for or pay over any tax imposed by this chapter on behalf of a corporation, partnership or limited liability company as an officer, member or employee of such corporation, partnership or limited liability company, shall be

personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

- B. If a person liable for any amount of tax under this chapter sells his business or stock and goods, the buyer shall make an inquiry to the city clerk and withhold from the purchase price any amount of tax that may be due under this chapter until such time as said person produces a receipt stating that no amount is due. If the buyer of such business or stock of goods fails to withhold from the purchase price as herein required, he shall be personally liable for the payment of the amount required to be withheld by him. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-8: TAX RETURNS; PAYMENT OF TAX:**

- A. The taxes imposed by this chapter shall be computed and paid for each calendar month, with taxes being due and payable to the city clerk on or before the twentieth day of the succeeding month. The amount of tax paid shall be computed on the total dollar value of all sales subject to taxation under this chapter. Each person required to hold a municipal nonproperty sales tax permit shall file a municipal nonproperty sales tax return on a form prescribed by the city clerk and a copy of their Idaho state sales tax return for the month at the same time said taxes are paid to the city clerk. In the event the city nonproperty sales tax amount and the amount shown on the state sales tax return differ, written explanation for any difference shall be submitted with the monthly payment. Such explanation shall be reviewed by the city clerk to determine whether it is or is not reasonable. Persons who have been permitted by the Idaho state sales tax commission to file quarterly sales or use tax returns shall notify the city clerk in writing, and the city clerk, thereupon, may require quarterly reporting of municipal nonproperty sales tax returns.
- B. The first payment of taxes under this chapter shall be due and payable together on February 20, 2008, for that period beginning January 1, 2008, and ending January 31, 2008. Thereafter, all payments shall be made monthly. The first quarterly payment of taxes under this chapter shall be due and payable together on April 20, 2008, for that period beginning January 1, 2008, and ending March 31, 2008.
- C. A municipal nonproperty sales tax return shall be filed each and every month or each and every quarter by every person engaging in

sales subject to taxation under this chapter regardless of whether or not any tax is due. Returns shall be signed by the person required to file the return or by a duly authorized agent.

- D. A valid sales tax exemption certificate issued by the Idaho state tax commission, upon filing a copy thereof with the city clerk, shall have the same effect to exempt the sale from the taxes imposed hereunder as in the Idaho sales tax act. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-9: REVIEW OF RETURNS:** As soon as practical after a monthly or quarterly municipal nonproperty sales tax return and payment is filed, the city clerk shall examine the same and determine the correct amount of the tax. For the purpose of ascertaining the correctness of any payment, determining the amount of tax due where none has been made, determining liability of any person for any tax payable under this chapter, or the liability at law or in equity of any person in respect to any tax provided by this chapter or collecting any such liability, the city clerk, or duly authorized deputy, is authorized:

- A. To examine the books, papers, records, or other data which may be relevant or material to the inquiry; and
- B. To summon the person liable for the tax, or any officer, agent or employee of such person, or any person having possession, custody or care of books of accounting containing entries relating to the business of the person liable for the tax, to appear before the city clerk, or deputy, at a time and place named in its summons to produce such books, papers, records or other data and/or give such testimony under oath as may be relevant or material to such inquiry. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-10: AUDITS AND DEFICIENCIES:**

- A. Determination Of Audits And Deficiencies:
  - 1. The city clerk may order an audit of any taxpayer under this chapter for the purpose of ascertaining the correctness or completeness of any return or payment.
  - 2. If any error or omission is discovered in such audits or in any other way, the city clerk may compute and determine the amount of tax due upon the basis of facts obtained from such information within

the city's possession and assert a deficiency. One or more deficiency determinations may be made for the amount due for one or for more than one period. In making such a determination, the city clerk may offset overpayments against amounts due. Further, said determinations shall be made for the period or periods in respect to which the person fails to make a return and shall be based upon any information which is in the city clerk's possession. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

3. The city clerk shall give written notice of the determination and the amount of deficiency, including interest at the rate of fifteen percent (15%) per annum from the date due, to the person from whom such deficiency amount is due. Such notice may be given personally or mailed to the person at the address furnished to the city in that person's permit application. (Ord. 280-07, 9-18-2007, eff. 1-1-2008; amd. 2010 Code)

**B. Redetermination Of Deficiency:**

1. Any person against whom a deficiency determination is made under this chapter, and any person directly interested, may petition, in writing, for a redetermination within thirty (30) days after service upon the person of notice thereof. If the petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the expiration of the period.

2. If a petition for redetermination is filed within the thirty (30) day period, the city clerk shall reconsider the determination and, if the person so requests in the petition, grant the person an oral hearing and give said person at least ten (10) days' notice of the time and place of the hearing, personally or by mail addressed to the person at the address furnished to the city in that person's permit application.

**C. Appeals:** When a redetermination is made, the city clerk shall give notice to the taxpayer against whom the redetermination is made. Within thirty (30) days of the date upon which such notice of redetermination is mailed or served, the taxpayer may file an appeal with the city council or may file a complaint with the district court for review of the city clerk's redetermination. There shall be no right of review to the city council nor to the district court on the determination of taxes due made by the city clerk unless a redetermination has been timely filed. No assessment of a deficiency in respect to the tax imposed by this chapter or a proceeding for its collection shall be made, begun or prosecuted until such notice of redetermination has

been mailed to the taxpayer and expiration of such thirty (30) day period after notice of redetermination, nor if a written appeal is filed, until a decision on the appeal becomes final. If the taxpayer does not appeal in writing to the city council or file an action in district court within the time prescribed in this subsection, the deficiency shall be assessed and shall become due and payable upon notice and demand from the city clerk.

- D. Interest On Deficiencies: Interest upon any deficiency shall be assessed at the same time as the deficiency and shall become due and payable upon notice and demand from the city clerk and shall be collected as part of the tax at the rate of fifteen percent (15%) per annum from the date prescribed for payment of the tax. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-11: STATUTE OF LIMITATIONS:**

- A. The amount of taxes imposed under this chapter shall be assessed within three (3) years of the time the return upon which the tax assessed to be due was or should have been filed, whichever is later; provided, however, if a deficiency determination or assessment has been made within the prescribed time, such tax may be collected within a period of six (6) years after assessment. The running of limitations provided by this section shall be suspended for the period during which the city clerk is prohibited from making the assessment or from collecting or proceeding in court due to a petition for redetermination or an appeal therefrom, and for thirty (30) days thereafter.
- B. In the case of taxes due during the lifetime of a decedent, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within six (6) months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent unless the assessment is stayed by a petition for redetermination or any appeal therefrom.
- C. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within three (3) years after the date of the discovery of the facts constituting the fraud. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-12: REFUNDS AND CREDITS:**

- A. If the city clerk determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the city clerk shall set forth that fact in his records, and the excess amount paid or collected may be credited on any amount due or payable to the city clerk for nonproperty taxes from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors.
- B. No such credit or refund shall be allowed or made after one year from the time the payment was made unless, before the expiration of such period, a claim therefor is filed by the taxpayer.
- C. An appeal from the city clerk's decision denying in part or in whole a claim for refund shall be made in accordance with the laws of the state of Idaho with regard to claims against municipalities. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-13: SELLER'S RECORDS:**

- A. Sellers remitting tax to the city shall keep such records, receipts, invoices, and other pertinent papers as the city clerk may require. Each such seller filing tax payments required under this chapter shall keep all such records for not less than four (4) years after making such payments unless the city clerk, in writing, authorizes their destruction.
- B. The city clerk, or any person authorized in writing by the clerk, may examine the books, papers, records, and equipment of any person liable for any tax, and may investigate the nature of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid. Any seller required to remit tax whose pertinent records are kept outside of the city must bring the records to the city for examination by the city clerk upon request of the latter or, by agreement with the city clerk, permit an auditor designated by the city clerk to visit the place where the records are kept, and there audit such records. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

3-2-14: **USE OF REVENUES:** The nonproperty tax revenue derived from and collected under this chapter shall be used for the following purposes:

- A. Improvement, maintenance and beautification of roads and associated infrastructure and other infrastructure within the city. The term "associated infrastructure" includes, but is not limited to, sidewalks, pathways, curbs, gutters, green strips, traffic signs, streetlights and other infrastructure located within city rights of way.
- B. The direct and administrative cost to collect and enforce this tax. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

3-2-15: **CONFIDENTIALITY OF INFORMATION:**

- A. No officer, agent or employee of the city shall divulge or make known to any persons, in any manner, except pursuant to the order of a court of competent jurisdiction, any information whatsoever submitted or obtained, directly or indirectly, pursuant to this chapter, or permit any nonproperty tax return or information submitted with regard thereto, or any copy thereof, or any paper or book so obtained, to be seen or examined by any person except as provided by law; provided, that in any action or proceeding brought for the collection, remission, cancellation, or refund of the whole or any part of a tax imposed under this chapter, or for enforcing the penalties prescribed for making false or fraudulent returns, any and all information contained in or provided with said returns may be made accessible to the elected and appointed officials, officers, and representatives of the city charged with enforcing or defending the same. All such returns, information, statements and correspondence relating thereto may be produced into evidence in any action, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such returns.
- B. The city council, under such rules and provisions as it may prescribe, may permit, notwithstanding the provisions of this chapter as to confidentiality, the commissioner of the internal revenue service of the United States, or his authorized representative, or the proper officer of any state imposing a tax, to inspect the nonproperty tax returns or information provided or obtained in connection therewith, or may furnish to such officer, or his authorized agent, copies or an abstract thereof.

- C. Nothing in this chapter shall prohibit a seller required to remit tax, or his authorized representative, upon proper identification, from inspecting and copying his own nonproperty tax returns and information supplied therewith. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

**3-2-16: VIOLATION; PENALTIES; ENFORCEMENT:**

- A. **Misdemeanor Violation; General Penalty:** Any person who intentionally violates any provision of this chapter shall be guilty of a misdemeanor, punishable as provided in subsection 1-4A-1A of this code. Furthermore, each month in which a person intentionally fails to report, or intentionally fails to accurately compute, or intentionally fails to accurately disclose the total amount of sales or rentals or the amount of tax to be paid, as imposed under this chapter, shall be considered a separate offense. (Ord. 280-07, 9-18-2007, eff. 1-1-2008; amd. 2010 Code)

- B. **Revocation Of Permits, Business Registration And Beer/Wine Licenses:**

1. Any person who violates any provision of this chapter shall have his municipal nonproperty sales tax permit, tax number and business registration, if applicable, revoked. The city clerk shall send written notice of revocation of said permit and/or registration to the permit holder by mailing the same by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the city council, challenging said revocation. If no appeal is timely made, said revocation becomes final. Whenever a person subject to this chapter has had said permit and tax number revoked, the city clerk shall not reissue said permit nor issue a new permit to said person until said person places with the city clerk a bond or other sufficient security in the amount equal to three (3) times the actual, determined, or estimated average monthly amount of tax payable by such person pursuant to this chapter.

2. Any person who violates any provision of this chapter shall have all municipal nonproperty sales tax permits, business registrations and municipal beer/wine license(s) revoked.

- C. **Security:** The city clerk, whenever it is deemed necessary to ensure compliance with this chapter, may require any person subject to this chapter to place with the city clerk such security as the city clerk may determine. The amount of said security shall not be greater than

three (3) times the estimated average monthly amount payable by such persons pursuant to this chapter. The amount of the security may be increased or decreased by the city clerk at any time, subject to the limitations set forth herein.

- D. **Lien Provisions:** Any amount of tax due under this chapter for which a person fails to report or accurately compute shall become a lien upon the property of said taxpayer on the date that the same becomes due, and the city may seek to enforce said lien and collect all taxes and interest due, together with the reasonable costs of collection, including attorney fees, in a court of competent jurisdiction.
- E. **Burden Of Proof:** For the purposes of proper administration of this chapter, and to prevent evasion of said nonproperty sales taxes, the burden of proving that a sale or rental is not a sale under this chapter is upon the person who makes the sale or rental in question.
- F. **Penalty Charges:**
1. Any person who is required to collect and pay over any tax imposed by this chapter and fails to pay over to the city the same when due shall be liable for and pay a penalty charge equal to five percent (5%) of the tax not paid, or a minimum of ten dollars (\$10.00), whichever is greater. The city clerk shall assess and collect said fee at the time any delinquent tax payment is tendered. The taxpayer shall have ten (10) days from the date payment is made to file a written appeal with the city council challenging said penalty determination. If no appeal is timely made as herein provided, said penalty determination shall be final.
  2. Any person who is found guilty of a misdemeanor in a court of competent jurisdiction for intentionally violating any provision of this chapter, in addition to other penalties provided by law, shall be liable to a penalty equal to the amount of the tax evaded, or not collected, or not accounted for or paid over. The city clerk shall determine and assess such penalties, and the same shall become due and payable upon notice and demand from the city clerk. The city clerk shall send written notice of such penalty charge to the permit holder by mailing the same by certified mail to the address given on the permit application. (Ord. 280-07, 9-18-2007, eff. 1-1-2008)

