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Retail Sales Tax
and the
Use Tax

Being the Re-enactment of the
Emergency Retail Sales Tax Law of 1935
and
Supplementary Use Tax Law of 1936

House Bill No. 615
Thirty-first General Assembly
Approved June 4, 1937

Published by
HOMER F. BEDFORD
State Treasurer

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AN ACT
Relating to the
RETAIL SALES TAX
and the
USE TAX
HOUSE BILL NO. 615

SECTION 1. Chapter 144, 1935 Colorado Statutes Annotated, is hereby amended and as so amended, is re-enacted to read as follows:

ARTICLE I.

Section 1. This act shall be known, and may be cited, as the Emergency Retail Sales Tax Act of 1935.

Section 2. In this act:

(a) The term "person" includes any individual, firm, co-partnership, joint adventure, corporation, estate or trust, or any group or combination acting as a unit and the plural as well as the singular number.

(b) The term "State Treasurer" or "Treasurer" shall mean the "State Treasurer of the State of Colorado."

(c) The term "sale" or "sale and purchase" includes installment and credit sales, and the exchange of property, as well as the sale thereof for money, every such transaction, conditional or otherwise, for a consideration, constituting a sale, and also includes the sale or furnishing of electrical energy, gas, telephone or telegraph services taxable under the terms of this act.

(d) The term "wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

(e) The term "wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale; and the sales shall be deemed a retail sales, and subject to the provisions of this act.

(f) The term "retailer" or "vendor" means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.

(g) "Retail sale" includes all sales made within the state except wholesale sales.

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

(i) The term "Taxpayer" shall mean any person obligated to account to the State Treasurer for taxes collected or to be collected under the terms of this act.

(j) The term "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(k) The term "tangible personal property" shall mean corporeal personal property.

(l) The term "purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this act.

(m) "Gross taxable sales" shall mean the total amount received in money, credits, property or other consideration valued in money from sales and purchases at retail within this state; and embraced within the provisions of this act; *provided*, that the taxpayer may take credit in his report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit; and *provided further* that the sale price of any article accepted as part payment on any new article sold shall not be included if the full price of the new article is included in gross sales; and *provided further* that on all sales at retail, valued in money, when such sales are made under conditional sales contract, or under other forms of sale where the payment of the principal sum thereunder be extended over a period longer than sixty (60) days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this act as has actually been received in cash by the taxpayer during the period for which the tax imposed by this act is due and payable; and *provided further* that taxes paid on gross sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax herein provided, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

(n) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label, or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under articles 1 to 5 of this chapter.

(o) Sales and purchases of electricity, coal and gas for use in processing, manufacturing, mining, refining, irrigation, building, construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses shall be deemed to be wholesale sales and shall be exempt from taxation under articles 1 to 5 of this chapter.

(p) Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless the seller shall collect and the purchaser shall pay such tax and the seller shall thereupon issue to the purchaser a receipt, or certificate, on forms prescribed by the treasurer, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the state treasurer for a refund of such taxes, and it shall then be the duty of the treasurer to determine the question of exemption, subject to review by the courts, as hereinafter provided. It shall be a misdemeanor, punishable as provided in this chapter, for any seller to fail to collect, or purchaser to fail to pay the tax levied by this chapter, and on sales on which exemption is disputed.

(q) When right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid.

Section 3. (a) It shall be unlawful for any person to engage in the business of selling at retail as the same is defined in this act, after the effective date of this act without first having obtained a license therefor, which license shall be granted and issued by the state treasurer and shall be in force and effect until the thirty-first day of December of the year in which it is issued, unless sooner revoked; except persons who have obtained and who hold license issued under the provisions of the initiated act enacted by the people of the State of Colorado at the general election held November 6, 1934, entitled: An act requiring a license for the operation, maintenance, opening or establishment of stores in this state prescribing the license and filing fees to be paid therefor and the disposition thereof, and the powers and duties of the state treasurer in connection therewith, and prescribing penalties for the violation thereof. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the state treasurer may require. It shall be the duty of each such licensee on or before January first of each year during which this law remains in effect, to obtain a renewal thereof if the licensee remain in retail business or liable to account for the tax herein

provided, but nothing herein contained shall be construed to empower the state treasurer to refuse such renewal except revocation for cause of licensee's prior license. For each license issued hereunder a fee of two dollars shall be paid, which fee shall accompany the application together with an additional fifty cents for filing fee. A further fee of two dollars shall be paid for each year or fraction thereof for which said license is renewed, together with an additional fee of fifty cents for filing fee; *provided* that only one-half of said two dollar (\$2.00) fee shall be charged on licenses issued after July first of any year.

(b) In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.

(c) Each license shall be numbered and shall show the name, residence and place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

(d) The state treasurer may, on a reasonable notice and after full hearing, revoke the license of any person found by the treasurer to have violated any provision of this act. This power to revoke licenses shall extend not only to licenses issued by the state treasurer but shall also extend to such licenses as may have been or may be issued under the provisions of the said initiated act; *provided, however*, that in the case of licenses issued under the provisions of said initiated act, any person engaged in the business of selling at retail in this state, as the same is defined in this act, without having secured a license therefor, shall be guilty of a misdemeanor, and shall be punished accordingly.

(e) Any finding and order of the treasurer revoking the license of any person shall be subject to review by the district court of the district where the business of the licensee is conducted, upon application of the aggrieved party. The procedure for review shall be, as nearly as possible, the same as now provided for the review of findings as now provided by writ of certiorari.

(f) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this act.

Section 4. From and after the effective date of this act, there is hereby levied and there shall be collected and paid:

(a) A tax upon sales and purchases of tangible personal property at retail in this state equivalent to two (2) per cent of the purchase price paid or charged, or in the case of retail sales involving the exchange of property, equivalent to two (2) per cent of the consideration paid or charged including the fair market value of the property exchanged at the time and place of the exchange.

(b) A tax equivalent to two (2) per cent of the amount paid:

(1) For telephone and telegraph service, whether furnished by public or private corporations or enterprises, for all intrastate telephone and telegraph service; (2) for gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas or electricity furnished and sold for domestic and commercial consumption and not for resale.

(c) A tax equivalent to two (2) per cent of the amount paid for all meals and cover charges, if any, furnished at any restaurant, eating house, hotel, drug store, club, resort, or other place at which meals or food are regularly served to the public.

ARTICLE II.

Section 5. Every retailer (also herein called "vendor") shall be liable and responsible for the payment of the entire amount of the said two (2) per cent tax imposed and payable upon his total taxable sales, and shall, before the fifteenth day of each month make a return to the state treasurer for the preceding calendar month, and remit all taxes collected and due the state from him, to the state treasurer, less five (5) per cent thereof to cover the vendor's expense in the collection and remittance of said tax. Such returns, verified by oath or affirmation of the taxpayer or his duly authorized agent, shall contain such information and be made in such manner and upon such forms as the state treasurer may prescribe and the state treasurer may extend the time for making returns and paying the taxes due under such reasonable rules and regulations as he may prescribe, but no such extension shall be for a greater period than is provided for in Section Nine (9) hereof. The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying same to the state treasurer, or from making such returns, shall be on the retailer or "vendor" under such reasonable requirements of proof as the state treasurer may prescribe.

Section 6. Retailers shall, as far as practicable, add the tax imposed under articles 1 to 5 of this chapter, or the average equivalent thereof, to the sales price or charge showing such tax as a separate and distinct item and when added such tax shall constitute a part of such price or charge, shall be a debt from consumer or user to retailer until paid, and shall be recoverable at law in the same manner as other debts.

Section 7. To provide uniform methods of adding the tax, or the average equivalent thereof, to the selling price, it shall be the duty of the state treasurer to formulate and promulgate after hearing appropriate rules and regulations to effectuate the purpose of sections 5 to 14 of this chapter.

Section 8. It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by articles 1 to 5 of this

chapter will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of sections 5 to 14 of this chapter shall be guilty of a misdemeanor.

Section 9. If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the state treasurer may, upon written request of the vendor, accept reports at such intervals as will in his opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. *Provided, however,* the state treasurer may by rule permit taxpayers whose monthly tax collected is less than twenty dollars (\$20.00) to make returns and pay taxes at intervals not greater than every three (3) months.

Section 10. For the purpose of more efficiently securing the payment, collection and accounting for the taxes provided for under articles 1 to 5 of this chapter, the state treasurer in his discretion, by proper rules and regulations, may provide for the issuance of tokens or other appropriate devices to facilitate collections.

Section 11. A retailer doing business in two or more places or locations, taxable hereunder, may file each return covering all such business activities engaged within this state.

Section 12. In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date chattel mortgage or a conditional sale, there shall be paid upon each payment upon the account or purchase price, that portion of the total tax which the amount paid bears in the total purchase price. The state treasurer may authorize a retailer doing business, wholly or partly on a credit basis, to make returns on the basis of cash actually received. Thereafter the retailer shall make return and pay taxes on that basis until further order of the state treasurer. Sections 5 to 14 of this chapter shall not operate to relieve from the tax, installment or credit business done during the operation of articles 1 to 5 of this chapter but realized upon thereafter.

Section 13. If any vendor shall, during any reporting period, collect as a tax an amount in excess of two (2) per cent of this total taxable sales, he shall remit to the state treasurer the full net amount of the tax herein imposed and also such excess; and if any vendor under the pretense or representation of collecting the tax imposed by articles 1 to 5 of this chapter shall collect during any reporting period an amount in excess of two (2) per cent of his total taxable sales, the retention of such excess or any part thereof, or the intentional failure to remit punctually to the state treasurer the full amount required to be remitted by the provisions of articles 1 to 5 of this

chapter, is declared to be unlawful and shall constitute a misdemeanor.

Section 14. No registration license shall be issued by the state treasurer or any county clerk and recorder for the operation of any automotive vehicle in this state other than for those vehicles which are licensed at the time of the effective date of articles 1 to 5 of this chapter, or which may have hitherto been licensed and the applicant for license is the same person in whose name license had previously been issued, unless and until the tax upon the sale and purchase of such vehicle, as provided by sections 5 to 14 of this chapter, has been paid. No transfer of title for the operation of any automotive vehicles in this state shall be issued by the state treasurer or county clerk and recorder unless and until the tax upon the sale and purchase of such vehicle, as provided in sections 5 to 14 of this chapter, has been paid. It shall be the duty of the state treasurer to promulgate such rules and regulations as it may deem necessary for the proper certification to the state treasurer that such tax has been paid. The provisions of this section shall not apply to automotive vehicles engaged in interstate commerce.

Section 15. All sales and purchases of commodities and services, the sale or use of which is now subject to a sale or excise tax under the laws of this state, or under the laws of the United States, where such federal sale or excise tax amounts to more than twelve and a half (12½) per cent of the sale price under said laws, all sales to the United States government, to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only, and all sales made to religious, charitable and eleemosynary corporations, in the conduct of the regular religious, charitable and/or eleemosynary functions and activities and all sales which the state of Colorado is prohibited from taxing under the constitution or laws of the United States, or the state of Colorado, shall be exempt from taxation under articles 1 to 5 of this chapter. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation hereunder, nevertheless the seller shall collect and the purchaser shall pay such tax, and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the treasurer, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption. The purchaser thereafter may apply to the state treasurer for a refund of such taxes, and it shall then be the duty of the treasurer to determine the question of exemption, subject to review by the courts, as hereinafter provided.

(b) A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as in this act provided. Such refund shall be made by the state treasurer after compliance with the following conditions prece-

dent: Application for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller, and be made upon such forms as shall be prescribed and furnished by the state treasurer, which forms shall contain such information as said state treasurer shall prescribe. Upon receipt of such application the treasurer shall examine same with all due speed and shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants may, within ten (10) days after such decision is mailed to them, petition the treasurer for a hearing on the claim in the manner provided in sections 26 and 27 of this chapter. The right of any person to a refund under this article shall not be assignable and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof. Any applicant for refund under the provisions of this section, or any other person, who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail of not more than ninety (90) days or by both such fine and imprisonment.

(c) If any person be convicted under the provisions of this section, such convictions shall be "prima facie" evidence that all refunds received by such person during the current year were obtained unlawfully and the state treasurer is hereby empowered and directed to bring appropriate action for recovery of such refunds. A brief summary statement of the above mentioned penalties shall be printed on each form application for refund.

(d) The burden of proving that sales, services and commodities, on which tax refunds are claimed, are exempt from taxation under articles 1 to 5 of this chapter, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the state treasurer may prescribe. Should the applicant for refund be aggrieved at the final decision of the treasurer, he may proceed to have same reviewed by the courts in the manner provided for review of other decisions of the treasurer as provided in section 27 of this chapter; except that such review shall be in the district court of the City and County of Denver. Duties of the state treasurer herein provided may be performed by a duly qualified deputy.

Section 16. (a) Except in accordance with judicial order or as otherwise herein provided, the state treasurer, his agents, clerks, and employees shall not divulge any information gained by it from any return filed under the provisions of articles 1 to 5 of this chapter. The officials charged with the custody of such returns shall not be required to pro-

duce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state treasurer in an action or proceeding under the provisions of articles 1 to 5 of this chapter to which it is a party, or on behalf of any party to any action or proceeding under the provisions of articles 1 to 5 of this chapter when the report of facts shown thereby are directly involved in such action or proceeding in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein contained shall be construed to prohibit the delivery to a person or his duly authorized representative of a copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representative of the state of the report or return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding is contemplated or has been instituted under articles 1 to 5 of this chapter. Reports and returns shall be preserved for three (3) years and thereafter until the state treasurer orders them destroyed.

(b) Any state officer or employee, or any member, officer, or employee of the state treasurer, who shall divulge any such information in any manner, except in accordance with proper judicial order, or as otherwise provided by law, shall be guilty of a misdemeanor.

ARTICLE IV.

Section 17. As soon as practicable after the return is filed, the state treasurer shall examine it; if it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return to be due, the tax shall be recomputed. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same persons. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate of one-half of one per cent per month from the time the return was due, shall be paid by the vendor ten (10) days after written notice and demand to him from the state treasurer.

Section 18. If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten per cent (10%) of the total amount of the deficiency and interest in such case shall be collected at the rate of one (1) per cent per month on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten (10) days after written notice and demand to

him by the treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty per cent (50%) of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the state treasurer and an additional one (1) per cent per month on said amount shall be added from the date the return was due until paid.

Section 19. For the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any person, the state treasurer or his duly authorized deputies, may hold investigations and hearings concerning any matters covered by articles 1 to 5 of this chapter and may examine any relevant books, paper, records or memoranda of any such person and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for its information. The treasurer and his authorized deputies shall have power to administer oath to such persons.

Section 20. All subpoenas issued under the terms of articles 1 to 5 of this chapter may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the district courts of this state; such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the state treasurer, such fees shall be paid in the same manner as other expenses of the state treasurer, and when the witness is subpoenaed at the instance of any party to any such proceeding, the state treasurer may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the state treasurer, in his discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

Section 21. Any district court of this state, or any judge thereof, either in term time or vacation, upon the application of the state treasurer, may compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the state treasurer or any member or officer thereof, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before said court.

Section 22. The state treasurer or any party in an investigation or hearing before the state treasurer, may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

ARTICLE V.

Section 23. It shall be the duty of every person engaging or continuing in business, in this state, for the transaction of which a license is required under articles 1 to 5 of this chapter, to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under the provisions of articles 1 to 5 of this chapter. It shall be the duty of every such person to keep and preserve for a period of three (3) years, all invoices of goods and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at any time by the state treasurer or his duly authorized agent. If no return is made by any person required to make returns as provided herein, the state treasurer shall give written notices by mail postpaid to such person to make such return within thirty (30) days of the date of such notice and if such person shall fail or refuse to make such return as he may be required to make in such notice, then such return shall be made by the state treasurer from the best information available and such return shall be prima facie correct for the purposes of articles 1 to 5 of this chapter, and the amount of the tax due thereon shall be deemed a deficiency and subject to the addition of penalties and interest as provided elsewhere herein.

Section 24. The tax imposed by articles 1 to 5 of this chapter, shall be a first and prior lien upon the goods and property of any retailer, and shall take precedence over other liens or claims of whatsoever kind or nature; and any retailer who shall sell out his business or stock of goods, or shall quit business shall be required to make out the return as provided in articles 1 to 5 of this chapter, within thirty (30) days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the state treasurer showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided and the taxes shall be due and unpaid after the thirty-day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner.

Section 25. All sums of money paid by the purchaser to the retailer as taxes imposed by this chapter shall be and remain public money, the property of the State of Colorado, in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the State of Colorado until paid to the state treasurer as herein provided, and for failure to so pay to the state treasurer, such retailer may be punished as provided by law.

The state treasurer may also treat such taxes due and unpaid as a debt due the state from the vendor. In case of failure to pay the tax, any portion thereof, or any penalty or interest thereon, when due, the state treasurer may recover at law the amount of such tax, penalty and interest in such Justice, County or District Court of the county wherein the taxpayer resides or has his principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the findings of the state treasurer as herein provided shall be "prima facie" proof of the amount due. It shall be the duty of the attorney general or any district attorney when requested by the state treasurer to commence action for the recovery of taxes due under articles 1 to 5 of this chapter, which remedy shall be in addition to all other existing remedies.

Section 26. If any person, having made a return and paid the tax provided by articles 1 to 5 of this chapter, feels aggrieved by the assessment made upon him by the state treasurer, he may apply to the state treasurer by petition in writing within ten (10) days after the notice is mailed to him for a hearing and a correction of the amount of the tax so assessed, in which petition he shall set forth the reasons why such hearing should be granted and the amount by which such tax should be reduced. The state treasurer shall notify the petitioner in writing of the time and place fixed by him for such hearing. After such hearing, the state treasurer shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner.

Section 27. (a) Every decision of the state treasurer shall be in writing and notice thereof shall be mailed to the vendor within ten (10) days, and all such decisions shall become final upon the expiration of thirty (30) days after notice of such decision shall have been mailed to the vendor, unless proceedings are taken within said time for review thereof as hereinafter provided.

(b) The district court of the county wherein the taxpayer resides or has his principal place of business shall have original jurisdiction in proceedings to review all questions of law and fact determined by the state treasurer in administering the provisions of articles 1 to 5 of this chapter by writ of certiorari to the state treasurer. If the taxpayer is not a resident of this state or has no principal place of business in this state, such venue shall be in the city and county of Denver. Such writs of certiorari shall be issued by the clerk of the court upon the duly verified petition of the taxpayer, filed within twenty (20) days after notice of the decision of the state treasurer in any such matter. The writ shall be served within five (5) days after its issuance and shall be returnable, at such times as the court may determine, not less than ten (10) days nor more than twenty (20) days after the date when the writ was issued. The state treasurer shall forthwith certify the record of its proceedings to said court.

The procedure therein shall be in conformity with the code of civil procedure.

(c) Before making application to the district court for a writ of certiorari, the party making such application shall file with the state treasurer a bond in twice the amount of the taxes, interests and other charges audited and stated in the determination and decision of the state treasurer with surety as is now provided in other cases on appeal, or at his option may deposit lawful money of the United States in the same manner as before provided.

(d) The decision of the district court may be reviewed in the supreme court upon writ of error by any party.

Section 28. All notices required to be given to the retailer or vendor, under the provisions of articles 1 to 5 of this chapter, shall be in writing and if mailed postpaid by registered mail, "return receipt requested" to him at his last known address shall be sufficient for the purposes of articles 1 to 5 of this chapter.

(b) Every hearing before the state treasurer shall be held in the county wherein the taxpayer resides or has his principal place of business, unless the taxpayer consents that such hearing shall be in the city and county of Denver.

Section 29. The license and tax imposed by articles 1 to 5 of this chapter shall be in addition to all other licenses and taxes imposed by law, except as herein otherwise provided.

Section 30. It shall be unlawful for any retailer or vendor to refuse to make any return provided to be made in articles 1 to 5 of this chapter or to make any false or fraudulent return or false statement on any return or fail and refuse to make payment to the state treasurer of any taxes collected or due the state, or in any manner evade the collection and payment of the tax, or any part thereof, imposed by articles 1 to 5 of this chapter, or for any person or purchaser to fail or refuse to pay such tax, or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by articles 1 to 5 of this chapter. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. Any corporation making a false return or a return containing a false statement as aforesaid, shall be guilty of a misdemeanor. Any court of competent jurisdiction, including the Justice Court, of the county in which the offender resides, or, if a corporation, then the county of its principal place of business, shall have jurisdiction to enforce this section.

In addition to the foregoing penalties, any person who shall knowingly and willfully swear to or verify any false statement shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

Section 31. Any person guilty of a misdemeanor, as defined and declared in articles 1 to 5 of this chapter, upon conviction, shall be punished by a fine

of not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding six (6) months in the county jail, or both such fine and imprisonment.

Section 32. The administration of articles 1 to 5 of this chapter is vested in and shall be exercised by the state treasurer who shall prescribe forms and reasonable rules and regulations in conformity with said articles for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed hereunder, and for the proper administration and enforcement of said articles.

Section 33. Five per cent (5%), or so much thereof as may be necessary, of the funds derived from this act, are hereby appropriated and allocated for the administrative expenses of the state in administering this act. The costs and expenses of administration and enforcement shall be paid out of said five per cent (5%), upon vouchers issued by the state treasurer and warrants of the auditor of state. The remainder of said funds shall, from time to time, upon the receipt thereof, by the state treasurer be deposited by him in the State Public Welfare Fund, to be expended as otherwise appropriated by law.

ARTICLE VI.

Section 34. There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using or consuming in this state any article of tangible personal property purchased at retail subsequent to the effective date of this article. Such tax or excise shall be two (2) per cent of the purchase price of such tangible personal property.

Section 35. This article is hereby declared to be supplementary to the Emergency Retail Sales Tax Law of 1935, articles 1 to 5 of this chapter, and shall not apply:

(a) To the storage, use or consumption of any tangible personal property the sale of which is subject to the retail sales tax imposed by said Emergency Retail Sales Tax Law of 1935 and any amendments thereto.

(b) To the storage, use or consumption of any tangible personal property purchased for resale in this state, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.

(c) To the storage, use or consumption of motor fuel upon which there has accrued or has been paid the motor fuel tax prescribed by the Motor Fuel Tax Law of 1933 (sections 381 to 397 of chapter 16 of these statutes), and which is not subject to refund.

(d) To the storage, use or consumption of tangible personal property brought into this state by a non-resident thereof for his own storage, use or consumption while temporarily within this state.

(e) To the storage, use or consumption of tangible personal property the sale or use of which is subject to an excise tax under the laws of the United States or this state, where such excise tax amounts to more than twelve and one-half per cent (12½) of the sale price under said laws; or to the storage, use or consumption of such property by the United States government, or by the state of Colorado or its institutions, or its political subdivisions in their governmental capacities only; or by religious or charitable corporations in the conduct of their regular religious or charitable functions.

(f) To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof.

(g) To the storage, use or consumption of electricity, coal, coke, fuel oil or gas for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses.

Section 36. Every person subject to the provisions of this article shall on or before the fifteenth day of each month make to the state treasurer on forms prescribed by him, a return showing in detail the tangible personal property stored, used or consumed by him within the state in the preceding calendar month which is subject to the tax herein imposed. Such return shall be verified by oath or affirmation of the taxpayer or his agent and shall be accompanied by payment of the tax shown thereon to be due.

Section 37. Said tax shall be a first and prior lien on the tangible personal property stored, used or consumed, shall have precedence over all other liens of whatsoever kind or nature, and in default of payment thereof the state treasurer, may, after demand, upon the person in possession of such property for payment of the tax, bring an action in attachment and seize the said property to secure the payment of said tax and penalties. In any such attachment proceeding no bond shall be required of the treasurer, nor shall any constable or sheriff require from the treasurer an indemnifying bond for executing the writ of attachment, and no constable or sheriff shall be liable in damages when acting in accordance with such writ.

Section 38. Any person who shall wilfully fail or refuse to make the return herein required, or who shall make a false or fraudulent return, or who shall wilfully fail to pay any tax owing by him as prescribed herein, and any person who shall aid or abet another in an attempt to evade such tax, shall be guilty of a misdemeanor, and subject to a fine of not

exceeding five hundred dollars (\$500.00) for each such offense.

Section 39. Any tax due and unpaid under this article shall be a debt to the state, and shall draw interest at the rate of two (2) per cent per month from the time when due until paid. The state treasurer may recover at law the amount of such tax and interest in a suit instituted by the attorney general in the name of the state; and this remedy shall be in addition to all other remedies.

Section 40. The term "person" as used in this article means an individual, corporation, co-partnership, firm, joint adventure, association, estate, trust, receiver, or any other group acting as a unit, and the plural as well as the singular number. "Storage" or "storing" means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this state.

Section 41. No registration license shall be issued by the state treasurer or any county clerk and recorder for the operation of any automotive vehicle in this state other than for those vehicles which are licensed at the time of the effective date of this section, or which may have hitherto been licensed and the applicant for license is the same person in whose name license had previously been issued, unless and until the tax upon the Use, Consumption or Storage of such vehicle, as provided by this article, has been paid. No transfer of title for the operation of any automotive vehicles in this state shall be issued by the state treasurer or county clerk and recorder, unless and until the tax upon the use, consumption or storage of such vehicle, as provided in this article, has been paid. It shall be the duty of the state treasurer to promulgate such rules and regulations as he may deem necessary for the proper certification to the state treasurer that such tax has been paid. The provisions of this section shall not apply to automotive vehicles engaged in interstate commerce.

Section 42. The administration of this article is vested in the state treasurer, and he shall prescribe forms and rules and regulations for the administration and enforcement hereof.

Section 43. Five per cent (5%) or so much thereof as may be necessary, of the funds derived from this act, are hereby appropriated and allocated for the administrative expenses of the state in administering this act. The costs and expenses of administration and enforcement shall be paid out of the said five per cent (5%), upon vouchers issued by the state treasurer and warrants of the auditor of state. The remainder of said funds shall, from time to time, upon the receipt thereof, by the state treasurer be deposited by him in the State Public Welfare Fund, to be expended as otherwise appropriated by law.

SECTION 2. Any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under former statutes relating to an excise

tax on sales at retail or an excise tax on other storage, use or consumption of commodities shall be held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for the enforcement of such penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order, which can or may be rendered, entered, or made in such actions, suits, proceedings or prosecutions, imposing, inflicting or declaring such penalty, forfeiture or liability, likewise any remedy for the collection of any liability, afforded by the prior laws shall continue in force for the purpose of the collection of such liability.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 4. The General Assembly hereby finds, determines and declares that this act is necessary for the immediate preservation of the public peace, health and safety.

SECTION 5. In the opinion of the General Assembly an emergency exists; therefore, this act shall take effect and be in force from and after its passage.

FRANK H. HAYES,
President of the Senate.

WAYNE N. ASPINALL,
Speaker of the House of Representatives.

Approved:
June 4, 1937, at 9:24 P. M.

TELLER AMMONS,
Governor of the State of Colorado.

INDEX

—A—	Section	Page
Abet or aid evasion of Use Tax, penalty..	38	17-18
Absorption of tax, unlawful to advertise..	8	7-8
Accounting, intervals of returns adjusted to	9	8
facilitated by issuance of tokens.....	10	8
method in installment sales.....	12	8
Accounts, bad and charged off, credit....	2 (m)	4
extending beyond 60 days.....	2 (m)	4
Act, cited as Emergency Retail Sales Tax		
Act, 1935.....	1	3
administration vested in Treasurer—		
Sales Tax.....	32	16
Use Tax.....	42	18
emergency clause.....	5	19
5% of tax allocated for expenses—Sales		
Tax.....	32	16
Use Tax.....	42	18
severable as to provisions.....	3	19
safety clutch.....	4	19
Action, in attachment to collect Use Tax..	37	17
for recovery of unlawful refund.....	15 (c)	10
Actions, under former statutes survive....	2	18-19
Acts, unlawful, enumeration of—Sales Tax	30	15
unlawful under Use Tax.....	38	17-18
false swearing, perjury.....	30	15
misdeemeanors.....	31	15-16
Additional license and tax, to all others..	29	15
Adjustment of returns to accounting		
methods.....	9	8
Administration of Act, by Treasurer—Sales		
Tax.....	32	16
of Use Tax.....	42	18
5% of tax allocated for expense of Sales		
Tax.....	33	16
of Use Tax.....	43	18
forms, rules, etc., prescribed by Treasurer	32	16
vouchers and warrants in payment of		
Sales Tax.....	33	16
of Use Tax.....	42	18
Advertise absorption of tax, unlawful....	8	7-8
Affidavits in support of refunds.....	15 (b)	10
Affirmation of return, Sales Tax.....	5	7
Use Tax.....	36	17
Aggrieved person, petition of.....	15 (b)	10
review in courts.....	15 (d)	10
Amount of tax, corrected, hearing.....	26	14
levied—Sales Tax.....	3 (a)	5
levied—Use Tax.....	34	16
Applicant for review file bond or cash....	27 (c)	15
Applications, for license.....	3 (a)	5
for hearing and correction of tax.....	26	14
for refund.....	2 (p)	5
for refund.....	15 (a)	9
time, form, procedure.....	15 (b)	10
statement of penalties printed on.....	15 (c)	10
Appropriation of 5% of tax for administra-		
tion—Sales Tax.....	33	16
Use Tax.....	43	18
Arbitrary return by Treasurer, when		
deemed a deficiency.....	23	13
Article, in part payment.....	2 (m)	4
	4 (a)	6
Ascertainment of tax, Treasurer prescribe		
forms, rules, etc.....	32	16
Association, a person.....	40	18
Assumption of tax, unlawful to advertise..	8	7-8
Attachment action to collect Use Tax.....	37	17
Attendance of taxpayer, witnesses, hearings	19	12
subpoenas for, service, fees, etc.....	20	12
Attorney General, inspect records.....	16 (a)	11
bring suit for tax and penalties.....	25	14
Auditor, State, issue warrants—Sales Tax.	33	16
Use Tax.....	43	18
Automobile, registration not issue until		
Sales Tax paid.....	14	9
Use Tax.....	41	18

	Section	Page
Automobile (Continued)		
transfer of title not issue until Sales Tax		
paid.....	14	9
Use Tax.....	41	18
Sales Tax not apply when used in inter-		
state commerce.....	14	9
Use Tax.....	41	18
Average equivalent of tax added to price..	6	7
Treasurer make rules governing.....	7	7
—B—		
Bad debts, charged off returns.....	2 (m)	4
Bond, of applicant for certiorari.....	27 (c)	15
none required in attachment to collect		
Use Tax.....	37	17
Books, records, etc., examined by Treasurer	19	12
District Court compel production.....	21	12
at taking of depositions.....	22	12
Building, electricity, coal, gas for—Sales		
Tax.....	2 (o)	5
Use Tax.....	35 (g)	17
Burden of proof, upon retailer.....	5	7
application for refunds upon claimant..	15 (d)	10
Business, defined.....	2 (b)	4
installment subject to tax.....	12	8
sale of, by retailer.....	24	13
retailer quitting.....	24	13
successor retain money to cover tax....	24	13
license for each place of.....	3 (b)	6
—C—		
Certiorari to Treasurer from District		
Courts.....	27 (b)	14
Chain licenses, each place licensed.....	3 (b)	6
returns from.....	11	8
Charitable corporations, exemption—Sales		
Tax.....	15 (a)	9
Use Tax.....	35 (e)	17
Charged off accounts, credit for.....	2 (m)	4
Chattel mortgage sales, method of taxing.	12	8
tax lien continues after law expires....	12	8
Civil liabilities, etc., under former statutes		
remain in force.....	2	18
Classified statistics may be published....	16 (a)	11
Clerk and Recorder, not issue auto regis-		
tration until tax paid—Sales Tax.....	14	9
nor transfer of title—Sales Tax.....	14	9
Use Tax.....	41	18
Coal, used in processing, exempt—Sales		
Tax.....	2 (o)	5
Use Tax.....	35 (g)	17
Code of civil procedure, govern on review.	27 (b)	15
Coke, used in processing, exempt from Use		
Tax.....	35 (g)	17
Collection of tax, forms, rules prescribed..	32	16
cost of, 5% allocated.....	33	16
and of Use Tax.....	43	18
facilitated by tokens.....	10	8
by seller of disputed tax.....	2 (p)	5
of tax accrued under former statutes... 2	18-19	8
in excess of 2% by vendor.....	13	8
remittance of, deduction for services... 5	7	7
Colorado, other 12½% excise exempts—		
Sales Tax.....	15 (a)	9
sales to departments and sub-divisions..	15 (a)	9
Use Tax.....	35 (e)	17
Combination, as person.....	2 (a)	3
Compounded product, ingredients—Sales		
Tax.....	2 (n)	4
Use Tax.....	35 (b) (f)	16-17
Conditional sales, impose tax, how.....	2 (m)	4
subject to tax.....	2 (c)	3
method of accounting.....	12	8
Constables, not liable for damages, serv-		
ing attachment.....	37	17
Constitutionally prohibited taxation, ex-		
empted.....	15 (a)	9
Construction, electricity, coal, etc., used in,		
exempted—Sales Tax.....	2 (o)	5
Use Tax.....	35 (g)	17

	Section	Page
Consumption tax, levied.....	34	16
supplementary to Sales Tax.....	35	16
not apply when Sales Tax does.....	35(a)	16
when purchase is for resale.....	35(b)	16
non-resident temporarily in state.....	35(d)	16
other 12½% excise tax.....	35(e)	17
U. S. Government exempt.....	35(e)	17
Colorado institutions, subdivisions, religious, charitable corporations.....	35(e)	17
when material for manufacturing.....	35(f)	17
electricity, coal, coke, etc., used in processing.....	35(g)	17
return of, time, form, payment.....	36	17
attachment action to collect.....	37	17
false return, evasion.....	38	17-18
no motor license until paid—Sales Tax.....	14	9
Use Tax.....	41	18
no motor transfer of title until paid—Sales Tax.....	14	9
Use Tax.....	41	18
Contract for continuous possession, as sale.....	2(q)	5
Control of property, constitutes storage.....	40	18
Conviction, for false statement for refund is evidence past refunds unlawful.....	15(b)	10
is evidence past refunds unlawful.....	15(c)	10
Co-partnership, as person—Sales Tax.....	2(a)	3
Use Tax.....	40	18
Corporation, as person—Sales Tax.....	2(a)	3
Use Tax.....	40	18
Correction of amount of tax, hearing.....	26	14
Cost of administration, 5% allocated—Sales Tax.....	33	16
Use Tax.....	43	18
County courts, in collection of tax.....	25	14
in misdemeanors.....	30	15
Courts, review Treasurer's rulings.....	2(p)	5
review order revoking license.....	3(e)	6
compel attendance witnesses.....	21	12
compel production books, records, etc.....	21	12
depositions, how and when.....	22	12
jurisdiction outlined.....	27(b)	14
jurisdiction in collection of tax.....	25	14
jurisdiction in misdemeanors.....	30	15
review Treasurer's ruling on refund.....	15(d)	10
guard information on returns.....	16(a)	11
Cover charges, taxable as sales.....	4(c)	7
Credit, given for excess tax payment.....	17	11
taken in reports, for refunds.....	2(m)	4
Credit business, returns made as payment received.....	12	8
Credits, as part of sales price.....	2(m)	4
Credit sales, method of tax accounting.....	12	8
subject to tax.....	2(c)	3
Criminal liabilities, etc., under former statutes remain in force.....	2	18

—D—

Damages, no liability for service of attachment writ.....	37	17
Dealers, sales to, by wholesalers.....	2(d)(e)	3
Debt, the tax due retailer from consumer.....	6	7
unpaid tax money and penalties.....	25	14
bad and charged off, credit for.....	2(m)	4
Decisions, of Treasurer in writing.....	27(a)	14
become final in 30 days unless reviewed.....	27(a)	14
Decreases, under former statutes, remain in force.....	2	18-19
Deficiency, under arbitrary return.....	23	13
in reported returns.....	17-18	11
due to negligence.....	18	11
due to fraud.....	18	12
Definitions, business.....	2(h)	4
gross taxable sales.....	2(m)	4
person.....	2(a)	3
purchase price.....	2(l)	4
retailer.....	2(f)	3
retail sale.....	2(g)	3
sale.....	2(c)	3
sale and purchase.....	2(c)	3
State Treasurer.....	2(b)	3
tangible personal property.....	2(k)	4

Definitions (Continued)	Section	Page
tax.....	2(j)	4
taxpayer.....	2(i)	4
Treasurer.....	2(b)	3
vendor.....	2(f)	3
wholesaler.....	2(d)	3
wholesale sale.....	2(n)(e)(o)	3-4-5
Depositions, of witnesses, how and when.....	22	12
Deputy, qualified, perform duties of Treasurer.....	15(d)	10
Disputes, concerning exemptions.....	2(p)	5
	15(a)	9
District Attorney, bring suit for tax and penalties.....	25	14
District Courts, compel attendance witnesses before Treasurer.....	21-22	12
compel production books, records, etc.....	21-22	12
jurisdiction of, outlined.....	27(b)	14
in collection of tax and penalties.....	25	14
in criminal charges.....	30	15
	22	12
review Treasurer's decisions.....	27(b)	14
issue writs of certiorari upon Treasurer decisions reviewed by Supreme Court.....	27(b)	14
review license revocation.....	27(d)	16
procedure.....	3(e)	6
procedure.....	3(e)	6
District Court, City and County of Denver, review Treasurer's decisions on refunds.....	15(d)	10
Domestic use, gas and electricity, taxable.....	4(b2)	7
Dominion, or control over property, as storage.....	40	18
Due and unpaid tax, debt to State.....	39	18
draw interest rate.....	39	18
Treasurer recover at law.....	39	18
additional remedy to all others.....	39	18
Duty, of vendor, to keep records of sales.....	23	13
preserve for 3 years.....	23	13
of Treasurer, see State Treasurer		

—E—

Electrical energy, sale of.....	2(c)	3
tax levied on domestic service.....	4(b1)	7
Electricity, in processing—Sales Tax.....	2(o)	5
Use Tax.....	35(g)	17
Eleemosynary corporations, sales to, exempt.....	15(a)	9
Emergency Retail Sales Tax Act of 1935, Act cited as.....	1	3
Enforcement of Act, vested in Treasurer—Sales Tax.....	32	16
Use Tax.....	42	18
Estate, as person—Sales Tax.....	2(a)	3
Use Tax.....	40	18
Evasion of Use Tax, or attempt, penalty.....	38	17-18
Every person subject to Use and Consumption Tax.....	34	16
Examination of books, records, etc.....	19	12
	23	13
Excess tax, payment of, refunded or credited.....	17	11
collections remitted to Treasurer.....	13	8
retention of, a misdemeanor.....	13	8-9
Exchange of property, as sale.....	2(c)	3
tax levied upon.....	4(a)	6
Excise tax, levied on sales and certain services.....	4	6-7
levied on privilege of storing, using or consuming property.....	34	16
other of 12½%, exempts from Sales Tax from Use Tax.....	15(a)	9
	35(e)	17
Exempt commodities, no license needed to sell.....	3(f)	6
Exemptions, burden of proof upon claimant.....	15(d)	10
review of Treasurer's ruling by courts.....	15(d)	10
Exemptions, to Sales Tax, commodities and services subject to State or Government excise tax of 12½%.....	15(a)	9

	Section	Page
Exemptions (Continued)		
U. S. Government.....	15(a)	9
State of Colo., its departments, institutions and political subdivisions.....	15(a)	9
religious, charitable and eleemosynary corporations.....	15(a)	9
sales which constitution or laws of U. S. or State of Colo. exempt.....	15(a)	9
disputes over, between purchaser and seller, collect tax.....	15(a)	9
wholesale sales, resale, processing.....	2(e) (n) (o)	3-4-5
Exemptions to Use and Consumption Tax,		
when subject to Sales Tax.....	35(a)	16
when for resale.....	35(b)	16
when ingredient of mfg. or compounded product.....	35(b)	16
when Motor Fuel Tax paid.....	35(c)	16
upon non-resident temporarily in State.....	35(d)	16
when subject to other 12½% excise tax of U. S. or State.....	35(e)	17
to U. S. Government.....	35(e)	17
to State, its institutions and subdivisions to religious or charitable corporations..	35(e)	17
to mfrs. and compounders.....	35(f)	17
on ingredients and components of mfg. and compounded products.....	35(f)	17
on electricity, coal, coke, fuel oil, gas used in mfg., processing, etc.....	35(g)	17
Existing penalties, forfeitures, etc., under former statutes remain in force.....	2	18
Expense of administration, 5% allocated for—Sales Tax.....	33	16
Use Tax.....	43	18
—F—		
Facilitate tax collections by tokens.....	10	8
Failure, to remit excess tax, misdemeanor to comply with Sec 5-14.....	13	8-9
to make return, Use Tax.....	38	17-18
False, statement on application for refund fraudulent return of Use Tax.....	15(b)	10
swearing, perjury.....	30	15
Fee, for license.....	3(a)	6
for filing license.....	3(a)	6
vendors, for collecting tax.....	5	7
of witnesses before Treasurer.....	20	12
travel allowance.....	20	12
Treasurer require deposit to cover.....	20	12
Fifteenth day of each month, return day—Sales Tax.....	5	7
Use Tax.....	36	17
Filing fee.....	3(a)	6
Firm, a person—Sales Tax.....	2(a)	3
Use Tax.....	40	18
First lien, Sales Tax is.....	24	13
Use Tax.....	37	17
Forfeiture, under prior acts remain in force.....	2	18
Forms, of returns, prescribed by Treasurer—Sales Tax.....	5	7
Use Tax.....	36	17
of receipts, for disputed tax.....	2(p)	5
collection of disputed tax.....	15(a)	9
to be prescribed by Treasurer.....	32	16
Fraud, in making returns—Sales Tax.....	18	12
Use Tax.....	38	17-18
Fuel, motor, exempt from Use Tax.....	35(c)	16
used in mfg., processing, etc.—Sales Tax Use Tax.....	2(o)	5
Fund, State Public Welfare Fund—Sales Tax.....	33	16
Use Tax.....	43	18
—G—		
Gas, sale of.....	2(c)	3
tax levied on domestic service.....	4(b2)	7
used in processing—Sales Tax.....	2(o)	5
Use Tax.....	35(g)	17

	Section	Page
Government, excise tax 12½% exempt—		
Sales Tax.....	15(a)	9
Use Tax.....	35(e)	17
sales to, exempt—Sales Tax.....	15(a)	9
Use Tax.....	35(e)	17
Gross taxable sales, defined.....	2(m)	4
Group, as person—Sales Tax.....	2(a)	3
Use Tax.....	40	18
—H—		
Hearings, may be held by Treasurer.....	19	12
attendance of taxpayer and employes... ..	19	12
subpoenas for witnesses.....	20	12
fees and travel allowances.....	20	12
Treasurer may require deposit to cover fees.....	20	12
District Court compel attendance of witnesses before Treasurer.....	21	12
for correction of amount of tax.....	26	14
Hold out to customer, absorption of tax, unlawful.....	8	7-8
—I—		
Imposition of Sales Tax.....	4	6-7
Use Tax.....	34	16
as installments are received.....	2(m)	4
Individual, a person—Sales Tax.....	2(a)	3
Use Tax.....	40	18
Industrial uses, sales of electricity, coal, gas for.....	2(o)	5
electricity, coal, coke, fuel oil, gas under Use Tax.....	35(g)	17
Information, wrongfully divulged.....	16(a)	10
penalty.....	16(b)	11
Ingredient, for resale—Sales Tax.....	2(n)	4
of processed product—Use Tax.....	35(b)	16
Installment sales, included.....	2(c) (m)	3-4
lien of tax continues after operation of Act terminates.....	12	8
Intent, to evade law.....	18	12
disregard of regulations.....	18	11
Interstate commerce, vehicles engaged in, Sales Tax.....	14	9
Use Tax.....	41	18
Intrastate telephone and telegraph service investigations, Treasurer's general authority.....	4(b1)	6-7
applications for refund.....	2(p)	5
revocation of license.....	3(d)	6
of returns.....	17	11
witnesses, fees, subpoenas.....	20	12
arbitrary returns.....	23	13
notices of, and venue.....	28	15
Invoices of goods sold, kept 3 years.....	23	13
Irrigation, electricity, coal, gas—Sales Tax electricity, coal, coke, fuel oil, gas—Use Tax.....	2(o)	5
Use Tax.....	35(g)	17
—J—		
Jobbers, sales to, wholesale.....	2(d)	3
Joint adventure, as person—Sales Tax.....	2(a)	3
Use Tax.....	40	18
Judgments, based on former statutes remain in force.....	2	18-19
Jurisdiction of courts, outlined.....	27(b)	14
of District Court of Denver.....	15(d)	10
in suits for collection of tax.....	25	14
faulty returns, evasion, etc.....	30	15
Justice Courts, in collection of tax and penalties.....	25	14
in misdemeanors.....	30	15
—K—		
Keeping of property, as storage.....	40	18
Keep records, duty of vendor to, for 3 years.....	23	13

—L—	Section	Page
Label, part of article for resale.....	2(n)	4
Lease for continuous possession, as sale...	2(q)	5
Legally prohibited taxation, exempted....	15(a)	5
Levy, of Sales Tax.....	4	6-7
of Use, Storage and Consumption Tax...	34	16
Liability of vendor for tax.....	5	7
Liabilities incurred under former statutes remain in force.....	2	18
License, application and issue.....	3(a)	5
except holders of Store License.....	3(a)	5
fee.....	3(a)	6
in addition to all others.....	29	15
not transferable.....	3(c)	6
not required for sale of exempt commodities.....	3(f)	6
numbered and contents.....	3(c)	6
period of.....	3(a)	5
posted in conspicuous place.....	3(c)	6
revocable by Treasurer.....	3(d)	6
two or more places.....	3(b)	6
License, motor, not issue until tax paid—Sales Tax.....	14	9
Use Tax.....	41	18
Lien, tax a first and prior on vendor's goods—Sales Tax.....	24	18
Use Tax.....	37	17
—M—		
Mailing notices, registered to vendor.....	28(a)	15
Manufacturing, deemed wholesale.....	2(n)	4
sales of electricity, coal, gas, for—Sales Tax.....	2(o)	5
ingredients exempt from Sales Tax.....	2(n)	4
ingredients exempt from Use Tax.....	35(b)(f)	16-17
electricity, coal, coke, fuel oil, gas under Use Tax.....	35(g)	17
Market value of exchanged property fixes tax.....	4(a)	6
Meals, price taxable.....	4(c)	7
Memoranda, books, records, etc., examination of.....	19	12
District Court compel production before Treasurer.....	21	12
at taking of depositions.....	22	12
Mining, sales of electricity, coal, gas for—Sales Tax.....	2(o)	5
Use Tax.....	35(g)	17
Misdemeanor, to fail to collect tax.....	2(p)	5
to fail to pay tax.....	2(p)	5
to sell without license.....	3(d)	6
to violate Sections 5 to 14.....	8	8
retention of excess tax collection.....	13	8-9
false statement on application for refund.....	15(b)	10
to wrongfully divulge information.....	16(b)	11
enumerated, generally—Sales Tax.....	30	15
penalties—Sales Tax.....	31	15-16
under Use Tax, wilfully fail or refuse return.....	38	17-18
make false or fraudulent return.....	38	17-18
wilfully fail to pay.....	38	17-18
aid or abet evasion.....	38	17-18
Money deposit, lieu of bond, on application for certiorari.....	27(c)	15
Motor fuel, exempt from Use Tax.....	35(c)	16
Motor license, not issue until tax paid—Sales Tax.....	14	9
Use Tax.....	41	18
not apply to vehicle engaged in interstate commerce—Sales Tax.....	14	9
Use Tax.....	41	18
Motor Fuel Tax Law, payment under exemptions from Use Tax.....	35(c)	16
—N—		
Negligence of vendor, in making return...	18	11
Non-resident, temporarily in state exempt under Use Tax.....	35(d)	16

	Section	Page
Notice, to vendor, to make return.....	23	13
Treasurer's decisions in writing.....	27(a)	14
to vendor in ten days.....	27(a)	14
generally, in writing, registered mail...	28(a)	15

—O—

Order, of Treasurer, on hearing to correct amount.....	26	14
made in writing and mailed to vendor...	27(a)	14
become final in 30 days unless reviewed	27(a)	14
Orders, under former statutes remain in force.....	2	18-19

—P—

Part payment, in property.....	2(m)	4
Payment, of disputed tax.....	2(p)	5
of tax accompany return—Sales Tax...	15(a)	9
Use Tax.....	5	7
facilitated by tokens.....	36	17
part of purchase price, in property.....	10	8
Penalties, for negligence in returns—Sales Tax.....	2(m)	4
for intentional disregard of rules.....	18	11
for fraud or intent to evade.....	18	12
failure to make return.....	23	13
failure to pay, trust money.....	25	13
treated as debt due State.....	25	14
false statement, application for refund..	15(b)	10
enumerated unlawful acts.....	30	15
for false swearing.....	30	15
for misdemeanors.....	31	15-16
wilful failure to make return, refuse, make false return under Use Tax....	38	17-18
wilfully fail to pay, evade or aid and abet evasion Use Tax.....	38	17-18
under former statutes, remain in force..	2	18
Perjury, penalty for false swearing.....	30	15
Person, defined—Sales Tax.....	2(a)	3
Use Tax.....	40	18
every, subject to Use and Consumption Tax.....	34	16
Petition, for hearing on application for refund.....	15(b)	10
for hearing and correction of tax.....	26	14
Political subdivisions of State, exempt—Sales Tax.....	15(a)	9
Use Tax.....	35(e)	17
Posting license, conspicuous place.....	3(c)	6
Precedence of tax, over all other liens—Sales Tax.....	24	13
Use Tax.....	37	17
Price, basis of Sales Tax.....	4	6-7
Use Tax.....	34	16
Prima facie evidence, that all refunds unlawful upon conviction false statement	15(c)	10
Printed summary of penalty for false statement on applications for refund.....	15(c)	10
Prior lien, tax is—Sales Tax.....	24	13
Use Tax.....	37	17
Procedure, on application for tax refund..	15(b)	10
under writs of certiorari to Treasurer..	27(b)	14
follows code civil procedure.....	27(b)	15
for review by courts.....	3(e)	6
Proceedings, under former statutes survive	2	18
Processing, sales of electricity, coal, gas for—Sales Tax.....	2(o)	5
Use Tax.....	35(g)	17
Property, as part of sale price.....	2(m)	4
returned, credit for.....	2(m)	4
Proportional returns, on credit, conditional and installment sales.....	12	8
Prosecutions, under former statutes survive	2	18-19
Public Welfare Fund, Sales Tax deposited in.....	33	16
Use Tax deposited in.....	43	18

	Section	Page
Purchaser, pay disputed tax.....	15(a)	9
	2(p)	5
apply for refund of disputed tax payment	15(a)	9
refunds allowed, when and how.....	15(b)	9-10
of business, or stock of goods retain		
money to cover tax.....	24	13
on failure so to do, personally liable....	24	13
Purchase price, defined.....	2(1)	4
basis of levy of Sales Tax.....	4	6-7
of Use and Consumption Tax.....	34	16
—Q—		
Quarterly returns, permitted when month-		
ly tax less than \$20.00.....	9	8
—R—		
Radio, electricity, coal, gas, for—Sales Tax	2(o)	5
Use Tax.....	35(g)	17
Railroad transportation, electricity, coal,		
gas, etc.....	2(o)	5
Use Tax.....	35(g)	17
Rate, of Sales Tax, 2%.....	4	6-7
of Use and Consumption Tax, 2%.....	34	16
Receipt, given by seller to purchaser....	2(p)	5
for disputed tax collection.....	15(a)	9
Receiver, a person, Use Tax.....	40	18
Records, books, etc., examined by Treas-		
urer.....	19	12
District Court compel production.....	21	12
at taking of depositions.....	22	12
of sales kept and preserved 3 years.....	23	13
Refining, electricity, coal, gas for—Sales		
Tax.....	2(o)	5
Use Tax.....	35(g)	17
Refunds, for returned goods.....	2(m)	4
or credit for excess payment.....	17	11
of disputed tax.....	15(a)	9
	2(p)	5
of purchase price.....	2(m)	4
of tax, unlawful to advertise.....	8	7-8
of disputed tax payment, procedure.....	15(b)	10
petition for hearing.....	15(b)	10
not assignable.....	15(b)	10
applications for, to bear printed state-		
ment of penalty for false statement..	15(c)	10
conviction false statement prima facie		
all refunds unlawful.....	15(c)	10
action by Treasurer for recovery of....	15(c)	10
review by courts of Treasurer's decision	15(d)	10
Registered mail, notices to vendor by....	28(a)	15
Registration auto license, not issue until		
tax paid.....	14	9
Use Tax.....	41	18
Regulations, prescribed by Treasurer—		
Sales Tax.....	32	16
Use Tax.....	42	18
concerning returns—Sales Tax.....	5	7
Use Tax.....	36	17
concerning uniform methods.....	7	7
adjust to accounting methods.....	9	8
form for disputed tax collections.....	2(p)	5
	15(a)	9
	15(b)	10
form for refund.....		
certifications of Sales Tax payment on		
vehicles.....	14	9
Use Tax.....	41	18
Religious corporations, sales to, exempt....	15(a)	9
Use Tax.....	35(e)	17
Remedies arising under former statutes,		
remain in force.....	2	18-19
Remission of excess collection to Treasurer	13	8
Remit tax to Treasurer, retailer.....	5	7
Renewal of license.....	3(a)	5
Report of gross sales.....	2(m)	4
Reports, preserved for 3 years.....	16(a)	11
Resale purpose, exempts from Sales Tax		
.....	2(e)(d)(n)(o)	3-4
Use Tax.....	35(b)(f)(g)	16-17

	Section	Page
Retail sale, defined.....	2(g)	3
tax levied upon.....	4(a)	6
Retail Sales Tax, exempts from Use Tax..	35(a)	16
Retailer, defined.....	2(f)	3
liable and responsible for tax.....	5	7
fee for collection of tax.....	5	7
has burden of proving exemption.....	5	7
add tax to sale price.....	6	7
keep and preserve records of sales.....	23	13
holds tax money in trust for State.....	25	13
notices to, registered mail.....	28(a)	15
goods, subject to lien of tax.....	24	13
sale of business or stock of goods.....	24	13
Retention of property, as storage.....	40	18
Return, before 15th for preceding month,		
Sales Tax.....	5	7
Use Tax.....	36	17
to be verified, Sales Tax.....	5	7
Use Tax.....	36	17
intervals may be adjusted to avoid hard-		
ship in accounting and when less than		
\$20.00 monthly.....	9	8
excess tax remitted to Treasurer.....	13	8
when produced in court.....	16(a)	10-11
copies may be furnished.....	16(a)	11
preserved for 3 years.....	16(a)	11
negligence in making.....	18	11
fraud and intent to evade.....	18	12
forms, rules and regulations prescribed		
by Treasurer for Use Tax.....	32	16
failure of, notice by Treasurer.....	23	13
arbitrary, made by Treasurer.....	23	13
false, evasion of, Use Tax.....	38	17
Return to writs of certiorari, from Dist.		
Courts.....	27(b)	14
Returned property, credit for.....	2(m)	4
Review, procedure.....	3(e)	6
of Treasurer's decisions by Dist. Court..	27(b)	14
of Dist. Court decisions by Sup. Court..	27(d)	15
of Treasurer's rulings authorized.....	2(p)	5
Revocation of license, after full hearing..	3(a)(d)	6
Rules and regulations, to be formulated by		
Treas.....	7	7
to be prescribed by Treas.—Sales Tax..	32	16
Use Tax.....	42	18
—S—		
Safety clutch.....	4	19
Sale, defined.....	2(c)	3
Sale and purchase, defined.....	2(c)	3
Sales, of electricity, coal, gas.....	2(o)	5
without license, a misdemeanor.....	3(d)	6
record of, kept by vendor.....	23	13
of business or stock of goods, by retailer	24	13
successor retain money to cover tax....	24	13
price, basis of Sales Tax.....	4	6-7
of Use and Consumption Tax.....	34	16
Sales Tax, exempts from Use and Con-		
sumption Tax.....	35(a)	16
Seller, shall collect disputed tax.....	15(a)	9
	2(p)	5
	3(b)	6
Separate license, for each place of business		
Services, subject to 12½% excise tax ex-		
empt.....	15(a)	9
telephone, telegraph, gas and electric—		
Sales Tax.....	4(b)	6-7
Sheriff, not liable in damages for service		
attachment to collect Use Tax.....	37	17
Shipping case, part of article.....	2(n)	4
State Auditor, issue warrants for adminis-		
tration.....	33	16
State of Colorado, institutions and sub-		
divisions, sales to, exempt from Sales		
Tax.....	15(a)	9
Use Tax.....	35(e)	17
State Public Welfare Fund, Sales Tax de-		
posited in.....	33	16
Use Tax.....	43	18

	Section	Page
State Treasurer, administration of Act,		
vested in.....	32	16
Use Tax.....	42	18
bring attachment action to collect Use Tax.....	37	17
bring action for recovery of refunds....	15(c)	10
certify record as return to writ of certiorari.....	27(b)	14
decisions to be in writing.....	27(a)	14
decisions become final in 30 days unless reviewed.....	27(a)	14
defined.....	2(b)	3
deputies not divulge information.....	16(a)	10
determine question of exemption.....	2(p)	5
duties may be performed by deputy.....	15(d)	10
examine books and records of vendor....	23	13
examine and re-compute return.....		17
formulate uniform methods for adding tax to sale price.....	7	7
hold investigations and hearings.....	19	12
issue vouchers in payment expense of administration—Sales Tax.....	33	16
Use Tax.....	43	18
make written order of correction of amount of tax.....	26	14
may extend time for making return....	5	7
may require deposit cover witness fees..	20	12
may adjust intervals of returns to vendors accounting methods.....	9	8
may permit quarterly returns where monthly tax less than \$20.00.....	9	8
make arbitrary return, when.....	23	13
not issue auto registration or transfer of title until tax paid—Sales Tax....	14	9
Use Tax.....	41	18
notify vendor of deficient tax payment..	17	11
petition to, for hearing on rebate.....	15(b)	10
prescribe form of tax return—Sales Tax	5	7
Use Tax.....	36	17
prescribe rules and regulations.....	5	7
prescribe form of receipt for disputed tax.....	2(p)	5
	15(a)	9
prescribe form for application for refund of disputed tax payment.....	15(b)	10
prescribe forms, rules—Sales Tax.....	32	16
Use Tax.....	42	18
prescribe forms for return of Use Tax...	36	17
preserve reports and returns 3 years... 16(a)		11
promulgate rules for certification that Sales and Use Tax have been paid on motor vehicles.....	14	9
	41	13
recover Use Tax and penalties at law..	39	18
refund excess or credit same.....	17	11
require proof on application for refund..	15(d)	10
revoke licenses after hearing.....	3(d)	6
treat unpaid tax money and penalties as debt.....	25	14
writs of certiorari to, and procedure....	27(b)	14
venue of hearings before.....	28(b)	15
Statistics, classified, may be published..	16(a)	11
Stock of goods, sale of, by retailer.....	24	13
Storage tax, attachment action to collect exemptions from.....	37	17
	35	16-17
false return, evasion, penalty.....	38	17-18
levied as Use and Consumption Tax....	34	16
motor license not issue until paid.....	41	18
not apply where Sales Tax does.....	35(a)	16
or storing, defined.....	40	18
return, time, form, payment.....	36	17
supplementary to Sales Tax.....	35	16
Store license, holders.....	3(a)	5
Street railway transportation, electricity, coal, gas for, Sales Tax.....	2(o)	5
Use Tax.....	35(g)	17
Subsequent return, take credit for bad debts, refunds, etc.....	2(m)	4
Successor to retailer selling business, retain money to cover tax.....	24	13
on failure so to do, personally liable....	24	13

	Section	Page
Suits, for recovery tax and penalties, Sales attachment action in Use Tax.....	25	14
no bond required.....	37	17
under former statutes survive.....	2	18-19
Supplementary, Use and Consumption Act to Sales Tax Act.....	35	16
Supreme Court, review District Court decisions.....	27(d)	15
—T—		
Tangible personal property, defined.....	2(k)	4
tax on sale of, Sales Tax.....	4(a)	6
Use Tax.....	40	18
Tax, defined.....	2(j)	4
imposed as payment received.....	2(m)	4
levied upon retail sales, purchases and exchange of tangible personal property.....	4(a)	6
telephone and telegraph service.....	4(b1)	6-7
gas and electric service.....	4(b2)	6-7
meals and cover charges.....	4(c)	7
amount or rate of tax.....	4	6-7
added to sale price.....	6	7
shown as separate item.....	6	7
constitute part of price.....	6	7
debt from consumer to retailer.....	6	7
recoverable at law.....	6	7
uniform methods formulated.....	7	7
returns, form and due date, Sales Tax..	5	7
Use Tax.....	36	17
Treasurer may adjust intervals to avoid hardship and when under \$20.00 monthly.....	9	8
unpaid, treated by Treasurer as debt... 25		14
once attached upon credit, conditional and installment sales continue after operation of Act ceases.....	12	8
excess collections remitted to Treasurer..	13	8
retention of excess, unlawful.....	13	8
excess refunded or credited.....	17	11
first and prior lien on vendor's goods... 24		13
money paid by purchaser as, property of State.....	25	13
hearing, for correction of amount.....	26	14
additional to all other taxes.....	29	15
levied on privilege of storing, using or consuming purchased tangible personal property.....	34	16
Use, due and unpaid, debt to State.....	39	18
Use, draw interest, rate.....	39	18
Treasurer recover at law.....	39	18
accruing under former statutes remain in force.....	2	18-19
Sales Tax exempts from Use Tax.....	35(a)	16
Taxpayer, defined.....	2(i)	4
Telegraph, service a sale.....	2(c)	3
tax levied.....	2(b1)	7
electricity, coal, gas, Sales Tax.....	2(o)	5
electricity, coal, coke, fuel oil, gas used for, exempt under Use Tax.....	35(g)	17
Telephone, service, a sale.....	2(c)	3
tax levied.....	2(b1)	7
electricity, coal, gas for, Sales Tax....	2(o)	5
electricity, coal, coke, fuel oil, gas, Use Tax.....	35(g)	17
Temporary stay of non-resident, under Use Tax.....	35(d)	16
Tokens, issuance authorized.....	10	8
Transfer, of license, not permitted.....	3(c)	6
of title to automobile, not to issue until Sales Tax paid.....	14	9
not to issue until Use Tax paid.....	41	18
Treasurer, defined (See State Treasurer)..	2(b)	3
Trust, as person, Sales Tax.....	2(a)	3
Use Tax.....	40	18
tax money in hands of vendor is.....	25	13
penalty for failure to pay.....	25	13

	—U—	Section	Page
Use Tax, attachment action to collect.....		37	17
exemptions		35	16-17
false return, evasion, penalty.....		38	17-18
levied		34	16
motor license not issue until paid.....		41	18
nor transfer of title.....		41	18
not apply where Sales Tax does.....		35(a)	16
return, time, form, payment.....		36	17
supplementary to Sales Tax.....		35	16
Use of property, continuous, as a sale.....		2(q)	5

	—V—		
Vendor, add tax to sale price.....		6	7
allowed 5% to cover collection.....		5	7
defined		2(f)	3
goods subject to lien of tax.....		24	13
has burden of proving exemption.....		5	7
holds tax money in trust for State.....		25	13
liable and responsible for tax.....		5	7
notices to, registered.....		28(a)	15
request adjustment of return intervals to accounting methods.....		9	8
selling business, or stock of goods.....		24	13
Venue, of court proceedings.....		15(d)	10
outlined generally.....		27(b)	14
of hearings before Treasurer.....		28(b)	15
Verification of tax return, Sales Tax.....		5	7
Use Tax.....		36	17
Vouchers, in payment expense of adminis- tration, Sales Tax.....		33	16
Use Tax.....		43	18

	—W—		
Warrants, in payment expense of adminis- tration, Sales Tax.....		33	16
Use Tax.....		43	18
Welfare, State Public Fund, tax deposited in, Sales Tax.....		33	16
Use Tax.....		43	18
Wholesaler, defined.....		2(d)	3
Wholesale sale, defined.....		2(e)	3
for processing—Sales Tax.....		2(n)	4
under Use Tax.....		35(f)	17
electricity, coal, gas for processing.....		2(o)	5
under Use Tax.....		35(g)	17
Wilful failure to pay Use Tax.....		38	17-18
Witnesses, at hearings before Treasurer..		19	12
subpoenas for attendance.....		19	12
fees and travel allowance.....		19	12
District Court compel attendance before Treasurer		21	12
depositions of, how and when.....		22	12
Worthless accounts, charged off.....		2(m)	4
Writ of certiorari, from District Court to Treas.		27(b)	14
return of.....		27(b)	14
file bond or money, on application for..		27(c)	15

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