

**ORDINANCE NO. 95-6
TOWN OF OPHIR**

AN ORDINANCE CONCERNING REVENUE, AND IMPOSING A 3% SALES TAX ON THE SALE OF TANGIBLE PERSONAL PROPERTY AT RETAIL AND THE FURNISHING OF TAXABLE SERVICES IN THE TOWN OF OPHIR, COLORADO, AND IMPOSING A 3% USE TAX FOR THE PRIVILEGE OF USING OR CONSUMING IN OPHIR, COLORADO, ANY CONSTRUCTION AND BUILDING MATERIALS AND FOR STORING, USING OR CONSUMING MOTOR AND OTHER VEHICLES ON WHICH REGISTRATION IS REQUIRED, PURCHASED AT RETAIL, AND PROVIDING FOR AN ELECTION ON THE PROPOSALS HEREIN CONTAINED.

WHEREAS, the Town of Ophir desires to enhance its revenues in order to provide government services and other municipal purposes;

WHEREAS, the Town of Ophir adopted Ordinance 94-15 which sets forth election procedures for Ophir municipal elections which are governed by the provisions of Article X, Section 20, of the Colorado Constitution, (commonly known as the "TABOR Amendment");

WHEREAS, the General Assembly of the Town of Ophir has determined that the imposition of a sales and use tax in the Town of Ophir will provide revenues for municipal purposes, and will thereby promote the health, safety, and welfare of the Ophir community; and,

WHEREAS, the General Assembly of the Town of Ophir desires to submit the question of adopting this Ordinance and a 3% sales and use tax to the registered electors of the Town of Ophir for their approval or rejection;

NOW, THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, COLORADO, the following:

This Ordinance may be known and cited as the "Town of Ophir Sales and Use Tax Ordinance".

ARTICLE I. SALES TAX

A. Purpose. The purpose of this Article is to impose a sales tax upon the sale at retail of tangible personal property and the furnishing of certain services in the Town of Ophir, Colorado, pursuant to the authority granted to incorporated towns of the State of Colorado by Article 2 of Title 29, Colorado Revised Statutes, as amended. This Article shall be so construed and interpreted as to effectuate the general purpose of making it uniform with the sales tax of the State of Colorado, levied by Article 26 of Title 39, C.R.S. as amended.

B. Definitions. For the purposes of this Article, the definition of words herein contained shall be as said words are defined in Section 39-26-102, C.R.S., as amended, and the definitions are incorporated herein.

C. Licenses

(1) It shall be unlawful for any person to engage in the business of selling tangible personal property at retail, or to furnish certain services as herein specified, without first having obtained a license therefore, which license shall be granted and issued by the Town Clerk, 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. Such license shall be granted to or renewed on upon application stating the name and address of the person desiring such license, the name of such business and location, and such other facts as the Town Clerk may require.

(2) It shall be the duty of each such licensee on or before January first of each year during which this Article remains in effect to obtain a renewal thereof if the licensee remains in retail business or is liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the Town Clerk to refuse such renewal except revocation for cause of licensee's prior license.

(3) For each license issued, a fee shall be paid according to the following schedule:

Annual License (for calendar year)	\$50.00
6 Month License	\$25.00
Monthly License	\$10.00

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- (3) 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.
- (5) Each license shall be numbered and shall show the name and place 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.
- (6) Any license may be revoked for cause as provided in Section 39-26-103, C.R.S., as amended, which provision is incorporated herein by this reference.
- (7) Any person engaged in the business of selling tangible personal property at retail, or the furnishing of certain services as herein specified, without having first secured a license therefore as provided in this Article, shall be guilty of a violation of this Article.

D. Property and Services Taxed

- (1) There is hereby levied and there shall be collected and paid a sales tax in the amount as in this Article provided, upon the sale at retail of tangible personal property and the furnishing of certain services, as provided in Section 39-26-103, C.R.S. as amended
- (2) The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S., as amended.
- (3) The gross receipts from sales shall include delivery charges when such charges are subject to the State Sales and Use Tax imposed by Article 26 of Title 39, C.R.S., as amended, regardless of the place to which delivery is made.
- (3) No sales tax shall apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., as amended, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid.
- (5) No sales or use tax shall apply to the sale of food purchased with food stamps. For the purposes of this paragraph, "food" shall have the same meaning as provided in 7 U.S.C. Section 2012(g), as such section exists on October 1, 1987, or is thereafter amended.

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(6) No sales or use tax shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children, 32 U.S.C. Section 1786. For the purposes of this paragraph, "food" shall have the same meaning as provided in 32 U.S.C. Section 1786, as such section exists on October 1, 1987, or is thereafter amended.

(7) No sales tax shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city or town equal to or in excess of that sought to be imposed by Ophir, Colorado. A credit shall be granted against the sales tax imposed by Ophir, Colorado with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by Ophir, Colorado.

(8) Notwithstanding any other provision of this Article, the value of construction and building materials on which a use tax has previously been collected by an incorporated town, city, or county shall be exempt from the town, city or county sales tax if the materials are delivered by the retailer or his agent to a site within the limits of such town, city, or county.

E. Exemptions

(1) There shall be exempt from taxation under the provisions of this Article, all of the tangible personal property and services which are exempt under the provisions set forth in Article 26, Title 39, C.R.S., as amended, which exemptions are incorporated herein by this reference, except the exemption allowed by Section 39-26-113(11), C.R.S., as amended, for the purchases of machinery or machine tools, and except the exemption of sales and purchases of electricity, coal, gas, fuel oil and coke as provided in Section 39-26-113(1)(a)(XXI), C.R.S., as amended.

(2) All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall be exempt from sales tax when such sales meet both of the following conditions:

(a) The purchaser is a nonresident of, or has its principal place of business outside of the Town; and

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(b) Such tangible personal property is registered or required to be registered outside the limits of the Town under the laws of the State of Colorado.

F. Amount of Tax

(1) There is hereby imposed upon all sales of tangible personal property and the Property and Services Taxed Section of this Article, a three per cent (3%) sales tax upon the sale at retail of tangible personal property and the furnishing of certain services as provided herein.

G. General Provisions

(1) For the purposes of this Article, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town.

(2) In the event a retailer has no permanent place of business in the Town, or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax imposed by this Article shall be determined by the provisions of Article 26 of Title 39, C.R.S., as amended, and by rules and regulations promulgated by the Department of Revenue of the State of Colorado.

H. Collection, Administration and Enforcement

The collection, administration, and enforcement of the sales tax imposed by this Article shall be performed by the Executive Director of the Department of Revenue of the State of Colorado in the same manner as the collection, administration, and enforcement of the Colorado State Sales Tax. Accordingly, the provisions of Articles 26 and 21 of Title 39 and Article 2 of Title 29, C.R.S., as amended, and all rules and regulations promulgated by the Executive Director of the Department of Revenue pertaining to such collection, administration, and enforcement, are incorporated herein by this reference.

I. Revenues Derived - Disposition

The Town of Ophir may place any revenues derived by this Ordinance in the general operating fund or any capital improvement fund of the Town of Ophir, or in any other fund which the Town deems appropriate and may spend the revenues derived for any lawful municipal purpose. This section I. shall be construed and interpreted to give the

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Town of Ophir the broadest discretion and authority to receive, manage, and spend any and all revenues derived by this Ordinance

ARTICLE II. USE TAX

A. Purpose

The purpose of this Article is to impose a use tax of three percent (3%) for the privilege of using, or consuming in the Town of Ophir, Colorado, any construction and building materials, purchased at retail

B. Limitations

In no event shall the use tax imposed by this ordinance extend or apply:

- (1) To the storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town of Ophir.
- (2) To the storage, use, or consumption of any tangible personal property purchased for resale in the Town of Ophir either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;
- (3) To the storage, use or consumption of tangible personal property brought into the Town of Ophir by a non-resident thereof for his own storage, use, or consumption while temporarily within the town; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this state by a non-resident to be used in the conduct of a business in this state;
- (3) To the storage, use or consumption of tangible personal property by the United States government, or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only, or by religious or charitable organizations in the conduct of their regular religious or charitable functions;
- (5) To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or 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 manufactured, compounded or furnished and the container, label, or the furnished shipping case thereof;

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(6) To the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule town, city, or city and county equal to or in excess of that imposed by this article. A credit shall be granted against the use tax imposed by this article with respect to a person's storage, use, or consumption in the town or city of tangible personal property purchased by him in a previous statutory or home rule town, city, or city and county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by the article;

(7) To the storage, use, or consumption of tangible personal property and household effects acquired outside of the Town of Ophir and brought into it by a non-resident acquiring residency;

(8) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a non-resident of the Town of Ophir and purchased the vehicle outside of the Town of Ophir for use outside the Town of Ophir and actually so used it for a substantial and primary purpose for which it was acquired and the vehicle owner registered, titled, and licensed said motor vehicle outside of the Town of Ophir;

(9) To the storage, use, or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of such use tax;

(10) To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to the effective date of this use tax ordinance;

C. Motor and Other Vehicle Use Tax Collection

(1) The three per cent (3%) use tax provided for herein shall be applicable to every motor vehicle for which registration is required by the laws of the State of Colorado, and no registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue or its authorized agents until any tax due upon the use, storage, or consumption thereof pursuant to this ordinance has been paid.

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(2) The use tax imposed by this ordinance shall be collected by the authorized agent of the Department of Revenue in San Miguel County.

(3) The proceeds of said use tax shall be paid to the Town of Ophir periodically in accordance with an agreement entered into by and between the Town of Ophir and the Department of Revenue.

D. Construction and Building Materials Use Tax Collection

(1) The collection of the use tax for construction and building materials shall be administered by the General Assembly of the Town of Ophir, Colorado.

(2) The collection and administration of the use tax imposed by this ordinance shall be performed by the General Assembly of the Town of Ophir in substantially the same manner as the collection, administration and enforcement of the Colorado Sales and Use Tax.

E. Revenues Derived - Disposition

The Town of Ophir may place any revenues derived by this Ordinance in the general operating fund or any capital improvement fund of the Town of Ophir, or in any other fund which the Town deems appropriate and may spend the revenues derived for any lawful municipal purpose. This section I. shall be construed and interpreted to give the Town of Ophir the broadest discretion and authority to receive, manage, and spend any and all revenues derived by this Ordinance.

ARTICLE III. ELECTION

Upon adoption of this Ordinance by the General Assembly of the Town, this Ordinance shall be submitted to an election by the registered electors of the Town of Ophir for their approval or rejection. Such election shall be held on the 7th day of November, 1995, and shall be conducted in accordance with Ordinance 94-15. The question for approval or rejection of this Ordinance shall be placed upon the official ballot in conformance with Article X, Section 20, of the Colorado Constitution and in substantially the following manner:

“SHALL THE TOWN OF OPHIR TAXES BE INCREASED \$60,000.00 ANNUALLY BY THE ADOPTION OF THE TOWN OF OPHIR SALES AND USE TAX ORDINANCE NO. 95-6 WHICH WILL IMPOSE A 3% SALES TAX

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ON THE SALE OF TANGIBLE PERSONAL PROPERTY AT RETAIL AND THE FURNISHING OF TAXABLE SERVICES IN THE TOWN OF OPHIR, COLORADO, AND IMPOSE A 3% USE TAX FOR THE PRIVILEGE OF USING OR CONSUMING IN OPHIR, COLORADO, ANY CONSTRUCTION AND BUILDING MATERIALS AND FOR STORING, USING OR CONSUMING MOTOR AND OTHER VEHICLES ON WHICH REGISTRATION IS REQUIRED, PURCHASED AT RETAIL?

YES _____

NO _____ ”

ARTICLE IV. EFFECTIVE DATE

Upon approval of this Ordinance by the registered electors as herein provided, this Ordinance shall become effective and in force at 12:01 a.m. on the first day of January, 1996. As soon as practical after said approval, the General Assembly of the Town shall request the Executive Director of Revenue of the State of Colorado to collect, administer, and enforce this Ordinance as herein provided and shall at the time of said request submit a true and complete certified copy of this Ordinance and all necessary proceedings in connection herewith to the Executive Director of the Department of Revenue.

ARTICLE V. SEVERABILITY

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

ARTICLE VI. EMERGENCY

The General Assembly hereby finds, determines and declares that an emergency exists and that this Ordinance is necessary for the immediate preservation of the public health or safety and the same shall be in full force and effect after publication and final passage as provided by law.

FIRST READING INTRODUCED, READ, AND ADOPTED THIS 15th DAY OF AUGUST, 1995.

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**SECOND READING READ AND ADOPTED THIS 19th day of September, 1995,
by the General Assembly of the Town of Ophir.**

By: Meeting Moderator, Town of Ophir

Attest: Lawrence Van Hoey, Ophir Town Clerk

**Approved as to Form: Eric James Heil, Esq.
Ophir Town Attorney**