

The Rights and Remedies of the City and the Taxpayer

Sec. 22-42. Business records; burden of proof.

(a) *Presumption; burden to prove exemption.* Every transaction of business conducted within the city is presumed to be taxable. The burden of proving that any person is exempt from taxation or any article, commodity or transaction is exempt under the provisions of this chapter shall be upon the person asserting the claim for exemption.

(b) *Responsibility to preserve records.* It shall be the duty of every person engaging or continuing in business within the city or otherwise subject to the tax under the provisions of this chapter or a person requiring a license under section 11-23 or 11-206 hereof to keep and preserve suitable records of all sales and transactions as may be necessary to determine the applicability of the provisions of this chapter thereto, and to keep such invoices, sales memoranda, books and records for a period of three (3) years; and they shall be open at any time for examination by the treasurer. Failure to keep and preserve suitable records as required by this section shall be a violation of this Code. Suitable records include, but are not limited to, the following:

- (1) Supporting documentation for every line item used on the sales/use tax return.
- (2) Sales and lease invoices, contracts.
- (3) Purchase journals and invoices.
- (4) Fixed asset depreciation schedules.
- (5) Check books and/or check registers.
- (6) State sales tax returns.
- (7) Federal and state income tax returns.
- (8) Sales journals.
- (9) Asset ledgers.
- (10) General ledgers.
- (11) Journal entries.
- (12) Chart of accounts.
- (13) Financial reports.
- (14) All other supporting documents not listed above.

(c) *Access to records by city personnel.* Business records are to be stored or kept within reasonable access of city personnel. Should a taxpayer's business records be maintained at a location outside the city's jurisdiction, the city maintains the right to inspect such records at the taxpayer's location within the city or to require the taxpayer to make the records available at city offices.

(d) *Audit of taxpayer business records.* The city maintains the authority to audit, upon reasonable notice, the business records of any taxpayer licensed to engage in business activity within the city. If the city provides written notice to the taxpayer prior to the expiration of the thirty-six-month statute of limitations that the taxpayer's records will be audited pursuant to this chapter, such limitation period shall be extended until the conclusion of the audit.

(e) *Place of audit.* The city has adopted the policy of auditing a taxpayer's records only at the taxpayer's business location where such business records are routinely kept. Notwithstanding this policy, the treasurer may, under exceptional circumstances, permit limited scope auditing of a taxpayer's records by mail. Such a determination is solely within the discretion of the treasurer and is not an appealable issue.

(f) *Subpoenas to appear and/or produce records.* When the treasurer has scheduled an audit or examination of the records required herein not less than thirty (30) days in advance, and has so notified the taxpayer, and the taxpayer fails to make available the records required in paragraph (b) at the appointed time, the treasurer may apply to any

judge of the municipal court of the city and/or district court in and for Jefferson County for a subpoena to require the taxpayer to appear before the treasurer, produce any of the foregoing information in the taxpayer's possession, and testify under oath before the treasurer. If the treasurer is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the taxpayer's taxable sales, the treasurer may apply to any judge of the district court in and for Jefferson County or the municipal court of the city for subpoenas to such other persons as the treasurer believes may have knowledge of the taxpayer's return or income. If the treasurer shows that the taxpayer cannot be found, evades service of subpoena, fails or refuses to produce records or give testimony, the judge may cause subpoenas to be issued to the persons sought, requiring them to appear before the treasurer and give testimony regarding the taxpayer's return or income. If any of the persons so served with subpoenas fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

(g) *Performance of audit not to limit or preclude additional audits.* Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of section 22-44.

(h) *Third-party recordkeepers.* Any third-party recordkeeper, as defined in section 22-21 hereof, shall have all of the rights, duties and obligations of a taxpayer, retailer or vendor solely as the same relates to the recordkeeping and record disclosing obligations imposed upon taxpayers, retailers or vendors by sections 22-40 and 22-42 hereof; provided, that the city shall attempt to obtain any records or reports from the taxpayer, retailer or vendor prior to its attempts to obtain such records from third-party recordkeepers, and in any event such attempts to obtain records or reports shall only be undertaken after providing notice to the taxpayer, retailer or vendor; provided, further, however that a third-party recordkeeper shall be deemed a taxpayer for all purposes and shall be subject to all of the provisions of this article relating to any and all taxable transactions engaged in by such third-party recordkeeper.

(i) *Coordinated audit :*

(1) Any taxpayer licensed in this city pursuant to section 11-1 or 11-23 of this Code of Laws, and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

(2) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the treasurer, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time-based limitation upon this city's right to recover tax owed by the vendor for the audit period.

(3) Except as provided in subparagraph (6), any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the time limits established in sections 22-42(d) and 22-44(a) of this Code of Laws may be audited by the city during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(4) If this city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subparagraph (3), the treasurer shall so notify the finance director of the municipality whose notice audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated

audit. The treasurer shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this city, the treasurer shall facilitate arrangements between this city and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The treasurer shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this city, the treasurer shall, once arrangements for the coordinated audit between the city and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The treasurer shall also propose a schedule for the coordinated audit.

(7) The coordinated audit procedure set forth in this section shall not apply:

- a. When the proposed audit is a jeopardy audit;
- b. To audits for which a notice of audit was given prior to Dec. 9, 2002;
- c. When a taxpayer refuses to promptly sign a waiver of the time limits established in sections 22-42(d) and 22-44(a) of this Code of Laws; or
- d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in such paragraph (2) of this subsection 22-42(i).

(Ord. No. 1988-781, § 1(21-30), 12-12-88; Ord. No. 1991-869, § 3, 9-1-91; Ord. No. 1991-885, §§ 1, 6, 12-23-91; Ord. No. 1272, § 1, 12-9-02)

Sec. 22-43. Refusal to report; estimate of tax; emergency collection procedures; penalties and interest.

(a) *Refusal to report.* The treasurer may, in any reasonable manner possible, estimate the amount of the tax due, to which interest and penalties in accordance with paragraph (c) may be added, in the event any taxpayer:

- (1) Refuses to report and remit taxes collected or required to be collected in accordance with the provisions of this chapter;
- (2) Fails to comply with the provisions of section 22-68 of this chapter;
- (3) Fails to file the report and remit the taxes required in section 22-38 of this chapter after selling his business;
- (4) Intends to leave the city without paying any taxes which are lawfully owed;
- (5) Removes or intends to remove property subject to tax hereunder from the city, or to sell any such property with the intent to remove the proceeds of sale from the city without paying tax thereon;
- (6) Engages or intends to engage in any activity which the treasurer reasonably believes to jeopardize collection of taxes authorized hereunder; or
- (7) Otherwise engages in conduct likely to prevent the establishment by the treasurer of an accurate and exact amount of tax due.

(b) *Estimation of taxes.* When an estimate of taxes due is made, the taxpayer shall be served with notice of the same by first class mail to the taxpayer's last known address or by leaving a copy with the person in charge at the taxpayer's business establishment or last known address.

(1) In the event that the taxpayer cannot be found at its last known address or notices sent by the city are returned by the post office, the city may serve notice by posting such notice in a conspicuous place at the location of the business as indicated on the business license or application. The burden shall at all times be on the taxpayer to inform the city of the taxpayer's current address.

(2) Unless the taxpayer files a written demand for administrative hearing and determination of tax liability, as provided in section 22-45 hereof, within twenty (20) days from the date of mailing or posting, whichever is later, of such notice, he shall conclusively be deemed to have accepted the estimate as a fair and accurate determination of his tax obligation and shall thereby waive the right to contest that determination. In the event that such a hearing is held, the determination of the hearing officer shall be reviewable as provided in section 22-45 hereof.

(c) *Emergency collection procedures.* In any case wherein it appears that collection of revenues from taxes lawfully imposed hereby is in danger of risk of loss or noncollection, or otherwise in jeopardy, the treasurer may immediately issue demand for payment. Upon issuance of such demand for payment, the tax required therein shall be due and payable, and the treasurer may proceed forthwith to collect such taxes by any lawful means, including, not by the way of limitation, filing of liens upon the property subject to tax, issuance and execution of distraint warrants, or filing of summons and complaint in any competent court; provided, however, that collection under this section may be stayed upon the provision by taxpayer to the treasurer of such security as, in the opinion of the treasurer, shall be satisfactory to ensure payment to the city of all taxes lawfully owed by taxpayer.

(d) *Penalty for late payment.* A penalty shall be imposed on any tax deficiency. Such penalty shall be fifteen dollars (\$15.00) or ten (10) percent of the delinquent tax or deficiency per reporting period, whichever is greater.

(e) Reserved.

(f) Reserved.

(g) *Penalty for fraud.* If any part of delinquent tax or deficiency is due to fraud with the intent to evade the tax, the penalty shall be one hundred (100) percent of the total amount of the deficiency. The treasurer shall mail a written notice of assessment to the taxpayer. The amount of the tax due, including the penalty and interest, shall become due and payable within ten (10) days after the date of the notice of assessment.

(h) *Assessment of interest.* Interest shall be assessed at the rate of one (1) percent per month. Interest shall be calculated for each month from the due date that a deficiency remains unpaid.

(i) *Treasurer may waive penalty.* For good cause shown, the treasurer in his discretion is authorized to waive any penalty assessed in this chapter. For purposes of this section, interest shall never be deemed a penalty.

(Ord. No. 1988-781, § 1(21-31), 12-12-88; Ord. No. 1991-869, § 3, 9-1-91; Ord. No. 1991-885, § 1, 12-23-91; Ord. No. 1996-1060, § 5, 12-16-96; Ord. No. 1272, § 1, 12-9-02)

Sec. 22-44. Limitation of action.

(a) No sales or use tax, or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more

than three (3) years after the date on which the tax was or is payable, nor shall any lien continue after such period, except for actual or estimated taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period.

(b) In the case of a false or fraudulent return resulting from either an intent to evade tax or from reckless or grossly negligent behavior on the part of the taxpayer, or in the case of failure or refusal to file a return, the tax due, together with all interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be begun at any time.

(c) The period of limitation provided herein shall not run against the city for an audit period if written notice is given to the taxpayer prior to the expiration of the statute of limitations that the latter's records will be audited pursuant to section 22-42(d) of this chapter.

(Ord. No. 1988-781, § 1(21-32), 12-12-88; Ord. No. 1991-869, § 3, 9-1-91; Ord. No. 1991-885, § 1, 12-23-91; Ord. No. 1272, § 1, 12-9-02)

Sec. 22-45. Taxpayer remedies.

(a) When the city asserts that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, the city shall mail a deficiency notice to the taxpayer by first class mail. The deficiency notice shall state the additional sales and use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a hearing on the deficiency pursuant to this section.

(b) In the event that the taxpayer disputes the tax liability imposed by the city either by any deficiency notice or otherwise, he shall file a written demand for an informal hearing and determination of tax liability within twenty (20) days from the date of mailing of the notice, which demand will stay the sale under any distraint warrant until the conclusion of the hearing. This demand shall include the name, business address and license number of the taxpayer, a copy of the notice sent by the city, the taxable periods and the amounts of tax which are being disputed, and a statement of the grounds upon which the taxpayer bases his claim.

(1) Upon receipt of the taxpayer's written demand, the treasurer shall set the time and place for the hearing, to be held as quickly as possible. The hearing shall be held before the treasurer or a hearing officer appointed by the treasurer who possesses education or experience in tax administration matters and who can render a proper decision. In the event that it is determined at the hearing that the taxpayer's liability is less than the amount in the possession of the treasurer, such excess shall be paid to the taxpayer forthwith.

(2) Failure to demand an informal hearing and determination of tax liability shall constitute an absolute and final waiver of the right to contest such liability either administratively with the treasurer, with the executive director of the state department of revenue pursuant to Section 29-2-106.1(3), Colorado Revised Statutes, or by judicial review pursuant to Section 29-2-106.1(8), Colorado Revised Statutes. When such determination is requested or when a request for a refund is timely made, the final decision rendered therein shall be appealable as provided herein.

(3) The hearing provided in subparagraph (b)(1) above shall be informal and no transcript, rules of evidence or filing of briefs shall be required, but the taxpayer

and the city may elect to submit written information and present informal witness testimony. The hearing shall be held and a decision issued within ninety (90) days after the receipt of the taxpayer's written request therefor. The treasurer or appointed hearing officer may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the hearing shall be held and a decision issued within one hundred and eighty (180) days of the taxpayer's request in writing therefor.

(c) If the dispute was not resolved by the informal hearing, the taxpayer, pursuant to the express authority of C.R.S. 29-2-106.1(9), may elect to pursue one of the following avenues of appeal within thirty (30) days of the city's final decision:

(1) The taxpayer may request a formal hearing on the record before a hearing officer, who shall be selected from among other metropolitan Denver treasurers/finance directors, or who shall be a neutral arbitrator selected by agreement of the parties. The hearing shall be held within sixty (60) days of the taxpayer's request. Those costs of compensation to the hearing officer and transcription costs shall be divided equally between the city and the taxpayer.

a. The formal hearing will be on the merits and on the record. The taxpayer shall be responsible for retention of his own legal counsel, if he chooses to be so represented. A transcript of the hearing will be maintained and the Colorado Rules of Evidence shall be observed unless otherwise agreed by the parties. The city shall not be entitled to file a legal brief unless the taxpayer chooses to submit such a brief or statement of legal authorities. The parties may call witnesses who will be subject to cross-examination.

b. Upon notice to the taxpayer that the city has granted the taxpayer a formal hearing, the taxpayer shall deposit with the city fifty (50) percent of the amount of the tax deficiency in dispute. The taxpayer will also pay to the city all amounts of tax and related penalties and interest not in dispute. The taxpayer may request permission of the treasurer to post security or a bond in lieu of cash payment of the amount in dispute, which request will be granted by the treasurer if the treasurer, in his sole discretion, determines the bond or security is adequate to protect the city's interest. Failure to post the cash or security required herein shall result in the denial of taxpayer's appeal.

c. In the event the final decision denies the taxpayer's claims, such taxes, penalties and interest unpaid shall become immediately payable without further notice of demand for payment by the city. The city may use all additional remedies to collect unpaid taxes, penalties and interest as provided for under section 22-46.

d. Any appeal from the decision rendered after such formal hearing shall be pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(2) The taxpayer may request the executive director of the department of revenue to conduct a hearing in accordance with C.R.S. § 29-2-106.1(3).

(3) The taxpayer may appeal the city's final decision to district court if the criteria of C.R.S. § 29-2-106.1(8) are met.

(d) The taxpayer shall have no right to any form of appeal under subsection (c) of this section if he has not exhausted administrative remedies or if he fails to

pursue one of the avenues of appeal within the time period described therein. For purposes of this paragraph, "exhaustion of administrative remedies" means:

(1) The taxpayer has timely requested in writing an informal hearing before the city in accordance with subsection (b) of this section and the city has held such hearing and issued a final decision thereon; or

(2) The taxpayer has timely requested in writing an informal hearing before the city in accordance with subsection (b) of this section and the city has failed to hold such hearing or has failed to issue a final decision within the time period described therein.

(e) In the event the city's final decision denies the taxpayer's claims, such taxes, penalties and interest unpaid shall become immediately payable without further notice of demand for payment by the city. The city shall use all additional remedies to collect unpaid taxes, penalties and interest as provided for under section 22-46.

(Ord. No. 1988-781, § 1(21-33), 12-12-88; Ord. No. 1989-804, § 3, 8-28-89; Ord. No. 1991-869, § 3, 9-1-91; Ord. No. 1991-885, §§ 1, 5, 12-23-91; Ord. No. 1996-1060, § 6, 12-16-96; Ord. No. 1272, § 1, 12-9-02)

Sec. 22-46. Additional remedies of city.

(a) Any tax imposed by this chapter, together with the interest and penalties herein provided and the cost of collection which may be incurred by the city, shall be and, until paid, remain a first and prior lien and shall take precedence over all other claims and mortgages upon:

(1) The goods, stock-in-trade and business fixtures of or used by any retailer under lease, title-retaining contract or other contractual arrangement; and

(2) The real and tangible and intangible personal property owned or leased by any person.

(b) Any lien arising under this section may be foreclosed by seizing under distraint warrant and selling so much of the property covered by the lien as may be necessary to discharge said lien. Such distraint warrant may be issued by the treasurer whenever the taxpayer or vendor is in default on the payment of sales or use tax, interest and penalty, and may be served and the goods or property subject to such liens seized and sold by the treasurer or any member of the city police department.

(c) Goods or property seized pursuant to distraint warrant shall be sold at public auction after thirty (30) days' public notice by publication not less than two (2) times in a newspaper of general circulation within the city. Such goods or other property, whether real or personal, may be redeemed by the taxpayer any time prior to sale by paying such tax, penalty, and interest as is due, together with such costs as have accrued from the seizure and preparation for sale.

(d) A notice of lien shall be provided for as set out in section 11-34(d) of this Code of Laws and a copy of such notice shall be filed in the public records of Jefferson County prior to the issuance of a distraint warrant.

(e) In lieu of seizure of property pursuant to a distraint warrant, the treasurer may cause a civil action to be filed in the district court of Jefferson County to enforce the city's lien for such tax upon the real property situated in that county or

in any other county in the state which may be subject to such lien or to subject any real property or any right, title, or interest in real property to the payment of such tax. The court shall adjudicate all matters involved in such action and may decree a sale of the real property and distribute the proceeds of such sale according to the findings of the court in respect to the interest of the parties and of the city. The proceedings in such action and the manner of sale, the period for and manner of redemption from such sale, and the execution of a deed of conveyance shall be in accordance with the law and rules of procedure for foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

(f) The treasurer may treat any taxes, penalties or interest due and unpaid as a debt due the city from the taxpayer.

(1) In case of failure to pay the taxes, or any portion thereof, or any penalty or interest thereon, when due, the treasurer may recover at law the amount of such taxes, penalties and interest, and the costs of collection incurred by the city in the Wheat Ridge Municipal Court or in any 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.

(2) The return of the taxpayer or the assessment made by the city, as herein provided, shall be prima facie proof of the amount due.

(3) No such civil action may be filed by the city until the time for the taxpayer to exercise his administrative remedies or to file an appeal has expired.

(4) This remedy shall be in addition to all other existing remedies available to the city.

(g) Whenever the business or property of any taxpayer subject to this chapter is subject to receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this chapter and for which the taxpayer is in any way liable under the terms of this chapter shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this chapter under process or order of any court without first ascertaining from the treasurer the amount of any taxes due under this chapter. If any tax is due, the officer shall pay the amount of the taxes out of the proceeds less costs before making payment to any judgment creditor or other claimants. For the purpose of this chapter, the term "taxpayer" shall include "retailer" or "vendor."

(h) It shall be a violation of this chapter to fail or refuse to make any return provided to be made in this chapter, or to make any false or fraudulent return, or any false statement in any return, or to prepare such returns in a reckless or grossly negligent manner, to fail or refuse to make timely payment to the treasurer of any taxes collected or due to the city, or in any manner to evade the collection and timely payment of the tax, or any part thereof, imposed by this chapter, or for any person or purchaser to fail or refuse to pay such tax or evade the timely payment thereof, or to aid or abet another in any attempt to evade the timely payment of tax imposed by this chapter.

(1) In his discretion, the treasurer may direct the issuance of a summons and complaint to appear before the Wheat Ridge Municipal Court to any person who may be in violation of any of the provisions of this chapter or the rules and regulations promulgated by the treasurer to enforce this chapter.

(2) Any person, corporation, partnership, company, association or other entity which violates any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction of such violation, shall be subject to the penalties set forth in section 1-5 of this Code. Issuance of a summons and complaint by the city and subsequent conviction of a violation of the Code of Laws in the municipal court shall not prohibit the court from requiring payment of all taxes, penalties and interest found to be due under this chapter in addition to any fine imposed by the court. Each and every twenty-four hour period of violation shall constitute a separate violation of this chapter.

(3) Nothing contained in this paragraph (h) shall preclude the treasurer from instituting a legal or equitable action in the Jefferson County District Court for the purposes of enforcing the provisions of this chapter. In the event such an action is undertaken, the city shall be entitled to recover its attorney's fees and costs of litigation expended in said action as a portion of its judgment rendered therein.

(i) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein.

(j) For the purpose of facilitating settlement and distribution of estates, trusts, receivership, other fiduciary relationships and the assets of corporations in the process of dissolution or that have been dissolved, the treasurer may agree with the fiduciary or surviving corporate directors upon an amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for any periods of tax liability under this chapter. Payment in accordance with such agreement fully satisfies the tax liability for the periods that the agreement covers, unless the taxpayer has committed fraud or malfeasance or misrepresented a material fact regarding the tax or liability therefor.

(1) Except as provided in subsection (3) of this paragraph (j), any personal representative of a decedent or the estate of a decedent, any trustee receiver, or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or that has been dissolved shall first pay taxes covered by this chapter due from such decedent, decedent's estate, trust estate, receivership, or corporation before he distributed the estate or fund under such person's control. Any such person who fails to pay taxes assessed within the periods authorized by this chapter is personally liable to the extent of the property distributed by such person for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership, or corporation imposed by or due under this chapter.

(2) Any distributee of a decedent's estate, a trust estate, or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund, or corporation is personally liable for

taxes assessed pursuant to this chapter to the same extent that the decedent, trust estate, fund or corporation is liable under this chapter.

(3) If a tax under this chapter is due from a decedent or the decedent's estate, personal liability of the persons set forth in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issued within eighteen (18) months after the decedent's personal representative files with the treasurer a written request for such determination, filed after it has filed the decedent's final return or the decedent's estate's return to which the request applies. A request for determination under this subsection does not extend the otherwise applicable period of limitation as specified in section 22-44.

(4) If a tax under this chapter is due from a corporation that is in the process of dissolution or has been dissolved, personal liability of directors or stockholders as provided in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issued within eighteen (18) months after the corporation files with the treasurer a written request, for such determination. Such request is required to be filed with the treasurer within ten (10) days from the time such dissolution has begun.

(k) For property seized pursuant to a distraint warrant, signed inventory of the property distrained shall be made by the treasurer. Prior to the sale, the city shall provide to the owner or possessor of such property, via first class mail, a copy of said inventory, a notice of the sum of the tax due and the related expenses incurred to date, and the time and place of the sale.

(1) A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made.

(2) The time fixed for the sale shall not be less than thirty (30) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the treasurer for no more than ninety (90) days from the date originally fixed for the sale.

(3) The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the city and the city shall file a release of lien thereof. If the property is purchased by the city, such property may be disposed of in the same manner as other city property and the lien thereon shall be released.

(4) The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the city or its agent may accept the higher bid.

(5) The property offered for sale may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs no less than twenty-four (24) hours before the sale.

(6) The treasurer shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale and transfer to the purchaser all right, title and interest of the taxpayer in and to the property sold.

a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company, or association to record the transfer of its books and records.

b. When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.

(7) Any surplus remaining after satisfaction of the tax due plus any costs of making the distraint and advertising the sale may be distributed by the treasurer first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.

(l) Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale, or other contract agreements.

(m) The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the treasurer, or the municipal court if the property was seized pursuant to a warrant used by the court, for the return of the property.

(1) Grounds for return of the property shall exist only if the person making the petition has a perfected interest in such property which is superior to the city's interest or that the property is exempt from the city's lien.

(2) The treasurer or municipal court, as appropriate, shall receive evidence on any issue of fact necessary to the decision of the petition. If the fact finder determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned.

(n) Unless the limitation period has been extended as provided in this section, the statute of limitations for provisions contained in this chapter shall be as follows:

(1) *Refunds.* Any claim for refunds for disputed tax shall be submitted to the treasurer on or before sixty (60) days from the date of such purchase.

a. Any claim for refund resulting from a notice of overpayment shall be submitted to the city on or before thirty (30) days after the date of such notice of overpayment.

b. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the city.

(2) *Assessments.* Except as provided by section 22-44(b), no notice of assessment shall be issued more than three (3) years after the due date of such tax due, or for a construction project which requires a city building permit, the date the final certificate of occupancy was issued for such project.

(3) *Notice of lien.* Except as provided by section 22-44(b), no notice of lien shall be issued more than three (3) years after the due date of the tax. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for such extended period.

(4) *Protest.* No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the treasurer in other than written form or after the period allowed in this chapter.

(Ord. No. 1988-781, § 1(21-34), 12-12-88; Ord. No. 1991-869, § 3, 9-1-91; Ord. No. 1991-885, § 1, 12-23-91; Ord. No. 1996-1060, § 7, 12-16-96; Ord. No. 1998-1120, § 10, 6-8-98; Ord. No. 1272, § 1, 12-9-02)