

Proposed Adoption of Standardized Definitions and Revised Lakewood Municipal Code (“LMC”) and Regulations Summary

Background

The Colorado Constitution gives local municipalities the ability to determine their tax base, establish rates, and perform their own tax collection. For businesses that operate in more than one jurisdiction, managing the (sales/use) taxation can be complex and burdensome. The General Assembly adopted Senate Joint Resolution (SJR) 14-038 urging Colorado’s home rule municipalities that locally collect their sales tax to work with the Colorado Municipal League (“CML”) to develop a package of uniform tax definitions. The intent of this resolution was to simplify taxation by having the municipalities utilize standardized terminology in their taxation policy. Definitions were drafted in a way that added clarity about current business practices without triggering a TABOR election. Standardized definitions were finalized February 2016. To date, 55 of the 72 self-collecting home rule jurisdictions have adopted the standardized definitions (Exhibit A).

Standardized Definitions

CML’s 2016 standardized definitions package initially consisted of 106 definitions. Five definitions have since been added. Of the 111 definitions, staff proposes that Lakewood adopt 82 relevant definitions (48 current definitions and 34 new definitions). Exhibit B provides Lakewood’s proposed definitions for adoption with a comparison to the language in the current code. Definitions and terminology have been updated throughout the revised code and regulations.

Revised LMC and Regulations – Key Changes

When incorporating the standardized definitions into Lakewood Municipal Code (“LMC”), it became clear that the LMC and associated regulations should be reviewed and revised in totality. Over the years, changes had been made to the LMC in response to state legislative changes, the 1992 standardized definition project, and local legal disputes and challenges. The current code is difficult for businesses to read and interpret. Furthermore, the current code contains typos, spelling and grammar errors, obsolete language, inconsistencies and concepts are scattered throughout.

The revised code has been written to make sales and use tax easy to understand by business owners and accountants, without the interpretation of an attorney. It is organized in a way that is logical, and the language more clearly articulates the taxation policy. Sales and use tax sections have been consolidated, concepts have been combined and headers and lists have been incorporated for easier navigation. References to old tax rates and old taxation of food have been updated. The language around charitable organizations has been updated to more clearly link to the criteria of 501(c)(3) and highlights the differentiating point of lessening the burden of government. The collection and enforcement sections have been simplified and expanded to reflect current processes, and an audit section was added.

The revised code contains important language for technological changes that incorporates the following definitions: Digital Product, Software as a Service, Software License Fee, Software Maintenance Agreement, Software Program, Economic Nexus, Marketplace and Marketplace facilitatory. In addition, it reflects and explains Lakewood’s position of 3rd party collections and addresses Economic Nexus and Marketplace Facilitators. These terms are necessary to bring LMC and regulations up to date with the digital era.

Review and Next Steps

Staff from Lakewood Finance and Legal partnered in the review and rewrite of the code and regulations. Considerable time and thought were put into the revised code and regulations to explain current processes and tax determinations, transforming the code to be more user (business) friendly; while ensuring no TABOR violations. The revised code and regulations have been reviewed by tax experts from other municipalities, as well

as members of small business associations. It is anticipated that the adoption of the revised code will result in incremental revenue from better compliance.

For City Council's review, it is recommended that attention be given to those areas with the most change (highlighted above). Printed color versions are available upon request.

- To streamline the review process, staff has attached:
 - Exhibit B – A redlined version of changes to definitions, including those not recommended for adoption
 - Exhibit C – A mapping of each section of the current code to the revised code, with notes highlighting changes
 - Proposed Tax Code
 - Proposed Regulations
- The current code and regulations can be found online at:
 - Code (Chapter 3.01): https://library.municode.com/co/lakewood/codes/municipal_code
 - Regulations: <https://www.lakewood.org/files/assets/public/finance/pdfs/regulations-and-special-regulations.pdf>

Upcoming review dates:

- October 19 - Budget & Audit Board Review
- November 2 - City Council Study Session
- November 23 – City Council 1st Reading
- December 14 – City Council 2nd Reading