

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1754
Series of 2011

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A BILL FOR AN ORDINANCE AMENDING ARTICLE 5-2 OF THE NORTHGLENN MUNICIPAL CODE TO CONFORM TO PROCEDURAL REQUIREMENTS SET FORTH IN STATE LAW

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Section 5-2-8(a) of the Northglenn Municipal Code is amended to read as follows:

(a) Assessment. If the Director determines, pursuant to an audit or estimated assessment, that any person, taxpayer or vendor has failed, neglected or refused:

- (1) To collect all taxes due; or
- (2) To make a return and pay all taxes due; or
- (3) To remit the proper amount of tax due; or
- (4) To pay in full all taxes due because of negligence, fraud or on a regular basis;

THEN penalties and interest shall also be assessed and the Director shall give to the delinquent person, taxpayer or vendor a written Notice of Final Determination--Assessment and Demand for Payment which notice shall state the full amount of taxes, penalties and interest due and shall be served personally or by certified or registered mail, which assessment of deficiency amount will be due and payable ~~twenty~~ THIRTY(20) (30) days after receipt of such notice.

Section 2. Section 5-2-8(c) of the Northglenn Municipal Code is amended to read as follows:

(c) Mathematical Error on Tax Returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Director shall notify the taxpayer by written Notice of Final Determination--Assessment and Demand for Payment of the amount of tax in excess of that shown in the return which is due and has been assessed. The taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within ~~twenty~~ THIRTY (20) (30) days from receipt of such assessment.

Section 3. Section 5-2-9(b) of the Northglenn Municipal Code is amended to read as follows:

(b) Immediate Enforcement Action. In any other case wherein it appears that the revenue is in jeopardy, the Director may immediately issue demand for payment; and, regardless of the provisions of Section 5-2-11 (Hearing AND APPEALS) and ~~5-2-12 (Appeals)~~ of the Code, the tax shall be due and payable forthwith and, in his discretion, the Director may proceed immediately to collect said tax as provided in subsection 5-2-17 (Distraint).

Section 4. Section 5-2-11(a) of the Northglenn Municipal Code is amended to read as follows:

(a) Request for Hearing. Any taxpayer may request ~~a formal or~~ AN informal hearing on any proposed tax by reason of Notice of Final Determination--Assessment and Demand for Payment or by reason of denial of his claim for refund by application to the Director within ~~twenty~~ THIRTY (20) (30) days of the receipt of a notice of deficiency, assessment or denial of refund. The request for hearing shall BE IN WRITING AND SHALL set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment or denial of refund.

Section 5. Section 5-2-11(b) of the Northglenn Municipal Code is amended to read as follows:

(b) Hearing Time and Place. The Director shall notify the taxpayer in writing of the time and place for such hearing thirty (30) days prior thereto, unless the taxpayer requests shorter notice or an extension of time. ~~In no event shall the~~ SUCH hearing SHALL be held AND THE FINAL DECISION THEREON ISSUED WITHIN NINETY (90) ~~more than sixty (60)~~ days after the Director's receipt of request for a hearing, EXCEPT THE PERIOD MAY BE EXTENDED BY THE DIRECTOR IF THE DELAY IN HOLDING THE HEARING OR ISSUING THE DECISION WAS OCCASIONED BY THE TAXPAYER, BUT, IN ANY SUCH EVENT, SUCH HEARING SHALL BE HELD AND THE DECISION THEREON ISSUED WITHIN ONE HUNDRED EIGHTY (180) DAYS OF THE TAXPAYER'S WRITTEN REQUEST THEREFOR. In all cases, the hearing shall be held in Northglenn, Colorado, at the office of the Director.

Section 6. Section 5-2-11(c) of the Northglenn Municipal Code is amended to read as follows:

(c) Informal Hearing. If the taxpayer elects to participate in an informal hearing, ~~which hearing must be held within thirty (30) days of the Director's receipt of the taxpayer's request for a hearing,~~ additional informal hearings shall not be permitted except at the discretion of the Director. Informal hearings shall be conducted in any manner acceptable to the taxpayer and the Director with the purpose of settling the outstanding issues between the parties. If no settlement is reached, ~~the taxpayer must request, in writing, a formal hearing on the record within twenty (20) days after the informal hearing and the Director shall give notice of the informal hearing pursuant to subsection (b) above.~~ OR IF THE TAXPAYER WISHES TO APPEAL THE DIRECTOR'S DECISION SET FORTH IN THE HEARING DETERMINATION NOTICE, OR IF THE TAXPAYER HAS TIMELY REQUESTED A HEARING PURSUANT TO SUBSECTION (A) OF THIS SECTION AND THE DIRECTOR HAS FAILED TO HOLD SUCH HEARING OR ISSUE A DECISION THEREON WITHIN THE TIME PERIODS SET FORTH IN SUBSECTION (B) OF THIS SECTION, THE TAXPAYER MAY REQUEST THE

EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE TO CONDUCT A HEARING. THE TAXPAYER SHALL REQUEST THE DEPARTMENT OF REVENUE HEARING WITHIN THIRTY (30) DAYS OF THE ISSUANCE OF THE DIRECTOR'S DECISION, IN ACCORDANCE WITH C.R.S. § 29-2-106.1. If the taxpayer fails to ~~request a formal hearing,~~ TIMELY APPEAL THE DIRECTOR'S DECISION TO THE DEPARTMENT OF REVENUE, OR FAILS TO TIMELY APPEAL THE DIRECTOR'S DECISION TO THE DISTRICT COURT, AS PROVIDED BY C.R.S. § 29-2-106.1(8), all further rights to a hearing and appeal are waived and the taxpayer shall be bound by the Notice of Final Determination-- Assessment and Demand for Payment or final Denial of Refund.

Section 7. Section 5-2-11(d) of the Northglenn Municipal Code is amended to read as follows:

(d) Director to Conduct Hearing. The hearing shall be held before the Director, or a hearing officer designated by the Director. THE HEARING SHALL BE INFORMAL AND NO TRANSCRIPT, RULES OF EVIDENCE, OR FILING OF BRIEFS SHALL BE REQUIRED; BUT THE TAXPAYER MAY ELECT TO SUBMIT A BRIEF, IN WHICH CASE THE CITY MAY SUBMIT A BRIEF. At the hearing, the taxpayer may assert any facts, make any arguments and file any briefs and affidavits he believes pertinent to his case. The taxpayer shall be notified of the name of the hearing officer twenty (20) days before the hearing date and any objection by the taxpayer to the hearing officer shall be filed in writing at least forty-eight (48) hours prior to the hearing.

Section 8. Section 5-2-11(f) of the Northglenn Municipal Code is amended to read as follows:

(f) Request for Hearing--Time Limitation. After the expiration of ~~twenty~~ THIRTY (20) (30) days from the receipt of the Notice of Final Determination Assessment and Demand for Payment or Denial of Refund, if the tax has not been paid, or if no request for hearing has been requested, or no written brief has been filed by the taxpayer, then the Notice of Final Determination--Assessment and Demand for Payment previously mailed, shall constitute a final assessment of the amount of the tax specified, together with interest, additions to tax and penalties or shall constitute a final Denial of Refund, as the case may be. The Director may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of its case.

Section 9. Section 5-2-11(h) of the Northglenn Municipal Code is amended to read as follows:

Formal-Hearing Determination Notices. After a AN ~~formal~~ INFORMAL hearing, upon rejection, in whole or in part, of the claim for refund or upon the finding by the Director that, on hearing the evidence, an assessment in whole or in part has been made against taxpayer validly, ~~The~~ THE Director shall send a Hearing Determination Notice to the taxpayer setting forth the amount of claim for refund denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

Section 10. Section 5-2-11(i) of the Northglenn Municipal Code is amended to read as follows:

(i) Tax Due Date. Unless an appeal be taken as provided in ~~Section 5-2-12~~ SUBSECTION (C) of this ~~Code~~ SECTION, the tax, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after receipt of the Hearing Determination Notice by the taxpayer.

Section 11. Section 5-2-12 of the Northglenn Municipal Code is deleted in its entirety.

Section 12. Section 5-2-13(c) of the Northglenn Municipal Code is amended to read as follows:

(c) Refund Disallowed. Upon receipt of such application, the Director shall examine same with all due speed and shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within ~~twenty~~ THIRTY (~~20~~) (30) days after such decision is received, may petition the Director for a hearing on the claim in the manner provided in Section 5-2-11.

Section 13. Section 5-2-13(e) of the Northglenn Municipal Code is amended to read as follows:

(e) Taxpayer's Discovery of Overpayment of Use Tax. A taxpayer may apply for a refund of payment of excess use taxes within sixty (60) days after discovery of the overpayment. The Director may deny such refund if he finds the taxpayer did or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of the application for a refund. The taxpayer may petition the Director for a hearing on the claim in the manner provided in Section 5-2-11 within ~~twenty~~ THIRTY (~~20~~) (30) days after receipt of the Director's Denial of Refund.

Section 14. Section 5-2-17(a) of the Northglenn Municipal Code is amended to read as follows:

(a) Warrant. The Director may issue a warrant under his own hand directed to any representative of the Department of Finance, including the sheriff of any county of the State, commanding him to distrain, seize, and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any provision of this Code, for the payment of the tax due together with penalties and interest accrued thereon and collection costs:

(1) When any deficiency in tax is not paid within ~~twenty~~ THIRTY (~~20~~) (30) days from the receipt of Notice of Final Determination Assessment and Demand for Payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this state within said period; or

(2) When any other amount of tax, penalty, or interest is not paid within ~~twenty~~ THIRTY (~~20~~) (30) days from the receipt of assessment and demand for payment thereof; or

(3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 5-2-9.

INTRODUCED, READ AND ORDERED POSTED this ____ day of _____,
2011.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2011.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney