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Commissioner Shupp moved adoption of the following Resolution:

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF EL PASO, STATE OF COLORADO

Resolution No. ~~187-182, General-52~~

A PROPOSAL AND RESOLUTION CONCERNING THE IMPOSITION OF A COUNTYWIDE SALES TAX OF ONE PERCENT (1%) UPON THE SALE AT RETAIL OF TANGIBLE PERSONAL PROPERTY AND THE FURNISHING OF CERTAIN SERVICES IN EL PASO COUNTY, AND A COUNTYWIDE USE TAX OF ONE PERCENT (1%) ONLY FOR THE PRIVILEGE OF USING OR CONSUMING IN EL PASO COUNTY ANY CONSTRUCTION AND BUILDING MATERIALS PURCHASED AT RETAIL, AND FOR THE PRIVILEGE OF STORING, USING OR CONSUMING IN EL PASO COUNTY ANY MOTOR AND OTHER VEHICLES PURCHASED AT RETAIL ON WHICH REGISTRATION IS REQUIRED; AND PROVIDING OTHER DETAILS RELATING TO SUCH SALES AND USE TAX.

WHEREAS, Section 29-2-103, Colorado Revised Statutes ("C.R.S."), authorizes counties to levy a countywide sales and use tax upon the approval of the majority of the registered electors of the county voting on such proposal; and

WHEREAS, El Paso County (the "County") has not heretofore imposed any sales or use tax; and

WHEREAS, the Board of County Commissioners of El Paso County, Colorado (the "Board") finds that the imposition of a sales and use tax of one percent (1%) will permit the County to reduce its 1987 ad valorem property tax mill levy equivalent to an amount of at least 5.25 million dollars; and

WHEREAS, the Board finds that it is in the best interests of the present and future inhabitants and citizens of the County to submit a one percent (1%) sales and use tax proposal to the registered electors of the County;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of El Paso County, Colorado:

GENERAL PROVISIONS

1. Purpose. The purpose of this Resolution is, upon the approval of a majority of registered electors voting on such proposal, to impose a sales tax of one percent (1%) upon the sale at retail of tangible personal property and the furnishing of certain services in the County, and to impose a use tax of one percent (1%) only for the privilege of using or consuming in the County any construction and building materials purchased at retail, and for the privilege of storing, using or consuming in the County any motor and other vehicles, purchased at retail on which registration is required, all in accordance with the provisions of Article 2 of Title 29, C.R.S., which provisions are incorporated herein by this reference. The sales and use tax shall become effective on January 1, 1988.

2. Statutory Definitions Incorporated. For purposes of this Resolution, the definitions of the words contained herein shall be as defined in Sections 39-26-102 and 39-26-201, C.R.S., which definitions are incorporated herein by this reference.

SALES TAX

3. Property and Services Taxed. There is hereby levied and imposed and there shall be collected and paid a sales tax of one percent (1%) of the gross receipts upon the sale of tangible personal property at retail and the furnishing of certain services as provided in Section 29-2-105(1)(d), C.R.S., upon all taxable transactions in the County. The tangible personal property and services taxable pursuant to this Resolution shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and shall be subject to the same exemptions as those specified in Section 39-26-114, C.R.S. (expressly including certain exemptions as provided in Section 7 hereof).

4. Adoption of State Rules and Regulations. The imposition of the tax on the sale at retail of tangible personal property and the furnishing of certain services subject to this tax shall be in accordance with schedules set forth in the rules and regulations of the Colorado Department of Revenue, and in accordance with any regulations which may be enacted by separate resolution of the Board.

5. Amounts Excluded. The amounts subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.

6. Delivery Charges Included. The gross receipts from sales shall include delivery charges, when such charges are subject to the sales and use tax of the State of Colorado imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made.

7. Exemptions. There shall be exempt from sales taxation under the provisions of this Resolution all of the tangible personal property and services which are exempt under Section 39-26-114, C.R.S., which exemptions are incorporated herein by this reference, expressly including the exemption for sales of food as defined and specified in Sections 39-26-102(4.5), 39-26-114(1)(a)(XX), 39-26-114(15) and 39-26-114(16), C.R.S., as said sections were amended or enacted pursuant to H.B. 1330 approved May 22, 1987 and effective October 1, 1987; the exemption for sales and purchases of electricity, coal, wood, gas (including natural, manufactured, and liquified petroleum gas), fuel oil or coke sold to occupants of residences as specified in Section 39-26-114(1)(a)(XXI), C.R.S.; and the exemption for sales and purchases of machinery or machine tools, as specified in Section 39-26-114(11), C.R.S.

8. Nonresident Exemption. All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall be exempt from the subject sales tax when such sales meet both of the following conditions:

(a) The purchaser is a nonresident of or has his principal place of business outside of the County; and

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

9. Exemption for Construction Materials Subject to Use Tax. The value of construction and building materials on which a use tax has previously been collected by the County shall be exempt from the County sales tax imposed by this Resolution if the materials are delivered by the retailer or his agent to a site within the limits of the County.

10. Place of Sale. For purposes of this Resolution, 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 County or to a common carrier for delivery to a destination outside the limits of the County. If a retailer has no permanent place of business in the County, 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 Resolution shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Department of Revenue of the State of Colorado.

11. Sales Tax License. No separate County sales tax license shall be required. Any person engaging in the business of selling tangible personal property at retail or furnishing certain services as herein specified shall annually obtain and hold a state license as required by Section 39-26-103, C.R.S.

12. Vendor's Fee. At the time of making a monthly return of the sales taxes required by this Resolution, every retailer shall be entitled to subtract from the sales tax remitted a sum equal to three and one-third percent (3 1/3%) of said tax as a fee, which fee shall be known as the "Vendor's Fee." Any retailer delinquent in remitting said tax shall forfeit such Vendor's Fee unless good cause be shown for the delinquent remittance.

13. Collection, Administration and Enforcement. The collection, administration and enforcement of the sales tax imposed by this Resolution 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. The provisions of Article 26 of Title 39, C.R.S., and all rules and regulations promulgated by the Executive Director of the Department of Revenue thereunder, are incorporated herein by this reference and shall govern the collection, administration, and enforcement of the sales tax imposed by this Resolution.

Pursuant to section 29-2-106, C.R.S., the Board shall, following the special election of September 15, 1987, and prior to November 15, 1987, request the Executive Director of the Department of Revenue to administer, collect and distribute the sales tax hereby imposed. The Board, at the time of making such request, shall provide the following documents to the Executive Director of the Department of Revenue:

(a) A copy of this Resolution, certified by the County Clerk and Recorder; and

(b) Affidavits of publication of this Resolution, as provided herein; and

(c) An Abstract of Election Results, certified as to the approval of the sales tax by a majority of the registered qualified electors of El Paso County voting thereon.

In the event that the Executive Director of the Department of Revenue fails or refuses to collect the sales tax imposed by this Resolution, the Board shall be authorized to provide for the collection, administration or enforcement of such sales tax to the extent permitted by law or to amend this Resolution to comply with the requirements of the Department of Revenue.

USE TAX

14. Property Taxed. There is hereby levied and there shall be collected and paid a countywide use tax of one percent (1%) only for the privilege of using or consuming in El Paso County any construction and building materials purchased at retail and for the privilege of storing, using or consuming any motor and other vehicles purchased at retail on which registration is required.

15. Definition. For purposes of this Resolution, the term "construction and building materials" shall mean any tangible personal property which is stored, used or consumed in the County, and which is intended to become part of, attached to, or a component of any building, structure, road or appurtenance in the County.

16. Use Tax Exemptions. In no event shall the use tax imposed by this Resolution extend or apply:

(a) 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 County.

(b) To the storage, use or consumption of any tangible personal property purchased for resale in the County, 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 tangible personal property brought into the County by a nonresident thereof for his own storage, use, or consumption while temporarily with the County; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in this state.

(d) 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 corporations in the conduct of their regular religious or charitable functions.

(e) 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 is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof.

(f) 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 sales or use tax of another county equal to or in excess of that imposed by this Resolution. A credit shall be granted against the use tax imposed by this Resolution with respect to a person's storage, use, or consumption in the County of tangible personal property purchased by him in a previous 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 a previous county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Resolution.

(g) To the storage, use, or consumption of tangible personal property and household effects acquired outside of the County and brought into it by a nonresident acquiring residency.

(h) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the County and he purchased the vehicle outside of the County for use outside the County and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, or licensed said motor vehicle outside of the County.

(i) 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 this use tax.

(j) 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 Resolution.

17. Motor and other Vehicle Use Tax Collection. The use tax provided by this Resolution shall be applicable to every motor and other vehicle purchased at retail on 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 or for a mobile home by the Colorado Department of Revenue or its authorized agent until any tax due upon the storage, use, or consumption thereof pursuant to this Resolution has been paid. The use tax imposed by this Resolution shall be collected by the County Clerk and Recorder, as the authorized agent of the Colorado

Department of Revenue. The proceeds of the use tax shall be paid to the County periodically in accordance with an agreement to be entered by and between the County and the Colorado Department of Revenue.

18. Construction and Building Materials Use Tax Collection. The collection of the use tax for construction and building materials shall be administered at the direction of the Board. The use tax may be paid by estimate through the payment of the tax at the time permits are issued for building and construction. As an alternative to the estimate procedure provided above, payment of this use tax may be made by the filing by any applicant for a building permit of an affidavit stating that the applicant intends to purchase all building and construction materials necessary for the project described in the building permit application from a licensed retailer located within the County. Every building permit applicant who utilizes the alternative procedure provided above shall maintain and preserve detailed purchase and receipt records which shall be subject to inspection and audit by employees of the Board, and any unpaid taxes due shall be subject to collection. The collection and administration of the use tax imposed by this Resolution shall be performed at the direction of the Board in substantially the same manner as the collection, administration and enforcement of the Sales and Use Tax of the State of Colorado.

USE OF TAX REVENUES

19. No Distribution to Municipalities. The Board has presently determined not to distribute any percentage or portion of the sales and use tax revenues to municipalities within the County.

ELECTION

20. Submission to Electors. Pursuant to Section 29-2-104(3), C.R.S., there being no general election within 120 days after the adoption of this Resolution, the sales and use tax proposal documented in this Resolution shall be referred to the qualified and registered electors of El Paso County at a special election to be held on Tuesday, September 15, 1987 (a date not less than 30 nor more than 90 days after the adoption of this Resolution). The question to be submitted to the qualified registered electors shall be as follows:

SHALL A COUNTYWIDE SALES AND USE TAX OF EL PASO COUNTY, COLORADO, AT THE RATE OF ONE PERCENT (1%) BE LEVIED AND IMPOSED, IN ACCORDANCE WITH THE PROPOSAL AND RESOLUTION NO. 87-182, General-52 OF THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY?

21. Punch Card Electronic Voting. A punch card electronic voting system shall be used at the election for voting and for counting votes cast on the question and for absentee voting, as provided in the Colorado Election Code of 1980. All applicable provisions of the Colorado Election Code of 1980 shall be followed in the use of said voting system.

22. Voter Qualification and Registration. Any person who is at least eighteen (18) years of age, a citizen of the United States, and who has resided in the State of Colorado and in the election precinct for thirty-two (32) days immediately preceding the election, and who has complied with the registration laws, shall be allowed to vote on the question of imposing a sales and use tax. The registration list for the election precinct shall contain the names and addresses of all electors residing within the election precinct whose names appeared on the registration records at the close of business on the twenty-fifth day preceding the election.

23. Precincts and Polling Places. There shall be _____ election precincts and polling places for the election. (Additionally, there shall be an absentee voter polling place at the office of the County Clerk and Recorder). The precinct boundaries shall be those established for general elections by the County and on file and of record with the County Clerk and Recorder, except that certain precincts shall be consolidated as shown below. The general election precinct numbers and polling places for the election shall be as follows:

General Election
Precinct Numbers

Polling Place

24. Election Officials. The election officials to submit the question shall be appointed by the Board in the manner provided by law. The election officials before beginning their duties shall severally take and subscribe an oath in writing in substantially the form and manner provided in the General Election Code of 1980. The County Clerk and Recorder may prescribe the duties of election officials, and other reasonable regulations pertaining thereto.

25. Absentee Voting. Absentee voting will be permitted for said special election in the manner provided by law. Applications for absent voters' ballots and completed absent voters' ballots shall be filed with the County Clerk and Recorder, and the County Clerk and Recorder is hereby authorized and directed to deliver to the supply judge for the absent voters' polling place all absent voters' envelopes received prior to and including 7:00 p.m. on said election day. The procedure for the casting of absent voter ballots shall be conducted in substantially the manner set forth in Part 1 of Article 8 of Title 1, C.R.S. Each absent voter shall sign an affidavit stating that he is a qualified registered elector of the County and that he has not previously voted at said election.

26. Publication of Resolution. The County Clerk and Recorder is hereby authorized and directed to publish the full text of this Resolution four separate times, a week apart, in the Pikes Peak Journal, the Colorado Springs Gazette Telegraph, and in the official newspaper of each municipality in the County.

27. Publication of Notice of Close of Registration. The County Clerk and Recorder is hereby authorized to publish a notice concerning the close of registration for the election in the Pikes Peak Journal and the Colorado Springs Gazette Telegraph, two legal newspapers of general circulation in the County. Such publications may be made in both English and Spanish.

28. Posting and Publication of Election Notice. The County Clerk and Recorder is hereby authorized and directed to conspicuously post, at each polling place, at least ten days prior to the election, the notice required by Section 1-6-102, C.R.S. The County Clerk and Recorder is hereby further authorized and directed to post conspicuously in her office and to publish a notice of election in the Pikes Peak Journal and the Colorado Springs Gazette Telegraph, at least once at least ten days prior to the election, pursuant to Section 1-6-202, C.R.S. Such publications and postings may be made in both English and Spanish.

29. Canvass. Immediately after the closing of the polls, the election officers shall deliver the ballot boxes containing the ballot cards to the counting center. The results shall be submitted to the County Canvassing Board to be canvassed according to law. If, upon canvassing the vote, it appears that a majority of the registered qualified electors voting at such election have voted in favor of the sales and use tax proposal, the Board is authorized to and shall implement the imposition of such sales and use tax.

30. Conduct of Election. The election shall be held, conducted and the results thereof shall be determined, so far as practicable, in conformity with the provisions of the Colorado Election Code of 1980. All registration materials, election materials, ballot cards, absentee voting materials, notices, forms and instructions may be made available in Spanish as well as English, and Spanish-language voter assistance may be made available at the County Clerk and Recorder's office and at the polling places.

MISCELLANEOUS

31. Seven Percent not Exceeded. Based on state and municipal sales and use tax rates existing on the date of adoption of this Resolution, the Board hereby finds and determines that the seven percent limitation provided in Section 29-2-108, C.R.S., will not be exceeded in any municipality within the County by the County sales and use tax imposed by this Resolution.

32. Effective Date-Applicability. Upon adoption by the electorate at the special election, this Resolution shall become effective and in force at 12:01 a.m. on January 1, 1988, and shall remain effective until repealed by the Board (subject to any rights of the owners of outstanding bonds).

33. Statutory References. All statutory citations in this Resolution shall be construed to refer to such statutes as the same may have been heretofore amended, and, subject to any rights of owners of outstanding bonds, as the same may hereafter be amended from time to time.

34. Amendments. Except as to the one percent (1%) rate of the sales and use tax, the provisions of this Resolution may be amended by resolution of the Board (subject, however, to any rights of owners of outstanding bonds); and such amendments need not be submitted to the electors of the County for their approval.

35. Severability. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution. It is the intention of the Board that the various parts of this Resolution are severable.

DONE AND SIGNED this 25th day of June, 1987, at Colorado Springs, Colorado.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

Devin Hardy
Deputy County Clerk

By: Mary Morrison
Chairman

Commissioner Whittemore seconded the adoption of the foregoing Resolution. The roll having been called, all five Commissioners voted "aye," and the Resolution was unanimously adopted by the Board of County Commissioners of the County of El Paso, State of Colorado.