

TOWN OF BATH
ORDINANCE 2024-05-17
MUNICIPAL SALES AND USE TAXES

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§ 1. Town of Bath Findings.

(a) The Town of Bath, a Class IV Municipality in Morgan County, Berkeley Springs, West Virginia, hereby finds and declares that the adoption by the Town of Bath for its municipal sales and service tax and its municipal use tax provisions of the Code of West Virginia, 1931, as amended, relating to imposition, administration, collection, and enforcement of the State

consumers sales and service tax codified in W. Va. Code §11-15-1 *et seq.*, the State use tax codified in W. Va. Code §11-15A-1 *et seq.*, and the Streamlined Sales and Use Tax Act codified in W. Va. Code §11-15B-1 *et seq.* will:

- (1) simplify collection of the Municipality's sales and use taxes,
- (2) simplify preparation of municipal sales and use tax returns by taxpayers, and
- (3) improve enforcement of the Municipality's sales and use taxes.

(b) The Town of Bath therefore declares that this ordinance shall be construed to accomplish the foregoing purposes.

§ 2. Definitions.

(a) Terms used in this ordinance or in the administration, collection, and enforcement of the taxes imposed by this ordinance and not otherwise defined in this ordinance shall have the meanings ascribed to them in articles 9, 10, 15, 15A, and 15B, chapter 11 of the Code of West Virginia, 1931, as amended.

(b) As used in this ordinance:

(1) "Business" includes all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions, which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) "Town" or "this Town" means the Town of Bath, Berkeley Springs, West Virginia.

(3) "Code of West Virginia" or "W. Va. Code" means the Code of West Virginia, 1931, as amended from time to time by the West Virginia Legislature.

(4) "Municipality" or "this Municipality" means the Municipality of the Town of Bath, Berkeley Springs, West Virginia.

(5) "Person" means any individual, partnership, association, corporation, limited liability company, limited liability partnership, or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(6) "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(7) "Purchase price" means the measure subject to the taxes imposed by this ordinance and has the same meaning as sales price;

(8) "Purchaser" means a person who purchases tangible personal property, custom software, or a service taxed by this ordinance.

(9) "Sale," "sales," or "selling" have the meaning ascribed to those terms in article fifteen-B, chapter eleven of the Code of West Virginia.

(10) "Sales and use taxes" means the taxes imposed by sections 3 and 4 of this ordinance.

(11) "Sales price" has the meaning ascribed to that term in article fifteen-B, chapter eleven of the Code of West Virginia.

(12) "Sales tax" means the tax levied by section 3 of this ordinance.

(13) "Service" or "selected service" have the meaning ascribed to those terms in article fifteen-B, chapter eleven of the Code of West Virginia.

(14) "State sales tax" means the tax levied by article fifteen, chapter eleven of the Code of West Virginia, as amended.

(15) “State use tax” means the tax levied by article fifteen-A, chapter eleven of the Code of West Virginia, as amended.

(16) “Tax” means the taxes imposed by this ordinance and includes additions to tax, interest, and penalties levied under article 10, chapter 11 of the Code of West Virginia, 1931, as amended.

(17) “Tax Commissioner” means the Chief Executive Office of the Tax Division of the Department of Revenue of this state, as provided in W. Va. Code §11-1-1.

(18) “This state” means the State of West Virginia.

(19) “Ultimate consumer” or “consumer” means a person who uses or consumes services, tangible personal property, or custom software.

(20) “Use” for purposes of the tax imposed by section 4 of this ordinance means and includes:

a. The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession, or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software, or the result of a taxable service is acquired for a consideration, including any lease, rental, or conditional sale of tangible personal property or custom software; or

b. The use or enjoyment in this state of the result of a taxable service. As used in this definition, “enjoyment” includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term “use” does not include the keeping, retaining, or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose

of subsequently transporting it outside the Town of Bath for use thereafter solely outside the Town of Bath.

(21) "Use tax" means the tax imposed by section 4 of this ordinance.

(22) "Vendor" means any person engaged in the Town of Bath in furnishing services taxed by this ordinance or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this ordinance.

§ 3. Imposition of Municipal Sales and Service Tax.

For the privilege of selling tangible personal property or customer software and for the privilege of furnishing certain selected service, a vendor doing business in the Town of Bath shall collect from the purchaser the taxes imposed by this section and pay the amount of taxes collected to the tax commissioner at the same time and in the same manner as the consumers sales and service tax imposed by article 15, chapter 11 of the Code of West Virginia, 1931, as amended, are paid to the tax commissioner. The rate of tax shall be 1% of the sales price, as defined in section 2 of this ordinance of the tangible personal property, custom software, or taxable service purchased or leased.

§ 4. Imposition of Municipal Use Tax.

An excise tax is hereby levied and imposed on the use in the Town of Bath of tangible personal property, custom software, and the results of taxable services, to be collected and paid to the tax commissioner as agent for the Town of Bath in the same manner that state use tax is collected under article 15A and article 15B, chapter eleven of the Code of West Virginia, 1931, as amended, and remitted to the tax commissioner. The rate of tax shall 1% of the purchase price, as

defined in section 2 of this ordinance, of the tangible personal property, custom software, or taxable service used within the Town of Bath.

§ 5. Calculation of Tax on Fractional Parts of Dollar.

The tax computation under section 3 and section 4 of this ordinance shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than 4 and rounded down to the lower whole cent whenever the third decimal place is 4 or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sales or use tax.

§ 6. State and Local Tax Bases.

The taxable base of the taxes imposed by sections 3 and 4 of this ordinance shall be identical to the sales and use tax base of this state except as provided in section 7 of this ordinance, unless otherwise prohibited by federal law, as required by W. Va. Code §11-15B-34.

§ 7. Exceptions.

The taxes imposed by this ordinance do not apply to:

(1) The sale or use of motor fuel, as defined in article 14C, chapter 11 of the Code of West Virginia, 1931, as amended.

(2) The sale or use of motor vehicles upon which the tax imposed by W. Va. Code §11-15-3c is paid.

(3) The purchase or use of any tangible personal property, custom software, or service that the Town of Bath is prohibited from taxing under the laws of this state or of the United States.

(4) The sales tax imposed by section 3 of this ordinance does not apply to any transaction that is exempt from the tax imposed by article 15, chapter 11 of the Code of West Virginia.

(5) The use tax imposed by section 4 of this ordinance does not apply to any purchase upon which the sales tax imposed by section 3 has been paid.

§ 8. Credit Against Municipal Use Tax.

(a) A person is entitled to a credit against the use tax imposed by section 4 of this ordinance on the use of a particular item of tangible personal property, custom software, or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software, or service: *Provided*, that the amount of credit allowed may not exceed the amount of use tax imposed by section 4 of this ordinance on the use of the tangible personal property, custom software, or results of the taxable service in the Town of Bath.

(b) For purposes of this section:

(1) "Sales tax" includes a sales tax or compensating use tax imposed on the sale or use of tangible personal property, custom software, or the results of a taxable service by the Town of Bath in which the sale occurred; and

(2) "Municipality" includes municipalities of this state or of any other state of the United States.

(c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or any other state. For purposes of this paragraph, "state" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

§ 9. Tax cumulative.

The taxes imposed by this ordinance are in addition to other taxes imposed on the sale or use of tangible personal property, custom software, or taxable services including, but not limited to, the State consumers sales and service tax imposed by article 15, chapter 11 of the W. Va. Code; the State use tax imposed by article 15A, chapter 11 of the W. Va. Code; the public utility tax imposed by the Town of Bath pursuant to W. Va. Code §8-13-5a.; the amusement tax imposed by the Town of Bath pursuant to W. Va. Code §8-13-6.; the tax on sales of alcoholic liquors and wine imposed by the Town of Bath pursuant to W. Va. Code §8-13-7.; the hotel occupancy tax imposed by the Town of Bath pursuant to article 18, chapter 7 of the W. Va. Code; and the special district excise taxes imposed by a county pursuant to W. Va. Code §7-22-1 *et seq.* or a municipality pursuant to W. Va. Code §8-38-1 *et seq.*

§ 10. Local Rate and Boundary Data Base; Changes.

(a) The tax commissioner is required by W. Va. Code §11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this state. The Town of Bath shall furnish the tax commissioner with information the tax commissioner requires for that database that will allow the tax commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the Town of Bath to the proper rate of tax. If any nine-digit zip code area includes area outside the Town of Bath, the single state and local rate assigned to that area in the tax commissioner's database will be the lowest rate applicable to that area: *Provided*, that, when sales occur at and are sourced to a physical location of the seller located in the Town of Bath in that nine-digit zip code area, the seller shall collect the tax imposed by section 3 of this ordinance.

(b) Whenever boundaries of the Town of Bath change, whether by annexation or de-annexation, the Town of Bath shall promptly notify the tax commissioner in writing of the change

in boundaries; provide the tax commissioner with the nine-digit zip code or codes for the area annexed or de-annexed; and any other information the tax commissioner may require to maintain the database. An ordinance annexing property into the Town of Bath, or an ordinance removing property from the corporate limits of the Town of Bath may not take effect any sooner than the 1st day of a calendar quarter that begins 60 days after Town of Bath provides written notice to the tax commission of a change in the boundaries of the Town of Bath.

(c) The nine-digit database shall be maintained by the Town of Bath until such time as the tax commissioner allows use of a different system to determine whether a location is within or outside the corporate limits of the Town of Bath.

§ 11. State level administration.

(a) The tax commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this ordinance as provided in W. Va. Code §8-13C-6 and §11-15B-33.

(b) The tax commissioner may retain from collections of the taxes imposed by this ordinance the fee allowed by W. Va. Code §11-10-11c or by any other state law or legislative rule.

(c) The tax commissioner shall deposit all the proceeds from collection of the taxes imposed by this ordinance, minus any fee for collecting, enforcing and administering taxes retained under this section, in the subaccount for the Town of Bath established in "municipal sales and services tax and use tax fund," an interest-bearing account created in the state treasury pursuant to W. Va. Code §8-13C-7. All moneys collected and deposited in the subaccount for the Town of Bath shall be remitted at least quarterly by the State Treasurer to the Town of Bath treasurer, as provided W. Va. Code §8-13C-7.

§ 12. Administrative procedures.

Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article 10, chapter 11 of the Code of West Virginia applies to the administration, collection, and enforcement of the sales and use taxes imposed pursuant to this ordinance, except as otherwise expressly provided in article 13C, chapter 8 of the Code of West Virginia, with like effect as if that act were applicable only to the taxes imposed by this ordinance and were set forth in extenso in this ordinance, as provided in W. Va. Code §8-13C-6.

§ 13. Criminal Penalties.

Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article 9, chapter 11 of the Code of West Virginia applies to the administration, collection, and enforcement of the Town of Bath sales and use taxes imposed pursuant to this ordinance with like effect as if that act were applicable only to the taxes imposed pursuant to this ordinance and were set forth in extenso in this ordinance, as provided in W. Va. Code §8-13C-6: *Provided*, that the criminal penalties imposed upon conviction for a criminal violation of this ordinance may not exceed the maximum penalties allowed by law for a similar violation of the ordinances of the Town of Bath.

§ 14. Automatic Updating.

Any amendments to articles nine, ten, fifteen, fifteen-A and fifteen-B, chapter eleven of the Code of West Virginia shall automatically apply to the municipal sales and use tax imposed pursuant to this ordinance, to the extent they are applicable to the taxes imposed by this ordinance.

§ 15. Deposit of Taxes Collected in General Revenue Fund.

When the Town of Bath treasurer receives periodic distributions of municipal sales and use taxes from the State Treasurer, the Town of Bath treasurer shall promptly deposit the amount received in the general revenue fund or account of the Town of Bath.

This ordinance shall become effective upon its adoption by the Town of Bath on June 18, 2024. However, the Town of Bath hereby suspends imposition and collection of the municipal sales and use taxes imposed by this ordinance until January 1, 2025, or such later first day of July as required by the legislative rule codified in W. Va. Code St. R. §110-28-1 *et seq.*

§ 16. Severability and Savings Clause.

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 applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The Town of Bath declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the article be enforced.

§ 17. Effective Date.

This ordinance shall become effective upon its adoption by the Town of Bath on June 18, 2024. However, the Town of Bath hereby suspends imposition and collection of the municipal sales and use taxes imposed by this ordinance until January 1, 2025, or such later first day of July as required by the legislative rule codified in W. VA. Code At. R. §110-28-1 *et seq.*

§ 18. Notification of Tax Commissioner.

Upon adoption of this ordinance by the Town of Bath, the Town of Bath Recorder shall forthwith send to the tax commissioner a certified copy of this ordinance, the rate and the boundary

database required by section 10 of this ordinance, a map showing the boundaries of the Town of Bath, a description of the boundaries of the Town of Bath; and such other information as the Tax Commissioner may need to administer, collect, and enforce the taxes imposed by this ordinance.

This Ordinance shall be effective from the date of its enactment.

This Ordinance is read this 4th day of June 2024 as the first reading thereof.

This Ordinance is read and enacted this 18th day of June 2024 after a second reading hereof.

Passed, Approved and Entered of record by the Council of the Town of Bath this 18th day of June, 2024.

Town of Bath, Morgan County, West Virginia

Scott E. Merki
Scott Merki, Mayor

(MUNICIPAL SEAL)

ATTEST:

Susan Webster
Susan Webster, Recorder