



WEST VIRGINIA

STATE TAX DEPARTMENT

Tool Kit - Municipal Sales and Use Taxes

Issued July 2017

Office of the Tax Commissioner
1001 Lee Street East
P.O. Box 11771
Charleston, WV 25339-1771
Telephone 304-558-0751
Fax 304-558-8999
tax.commissioner@wv.gov

CAUTION

The information in this publication reflects the position of the West Virginia State Tax Department on municipal sales and use tax laws enacted by the West Virginia Legislature as of July 1, 2017. Laws enacted after that date, administrative rule changes, and court decisions may change provisions in this publication.

Tool Kit for Municipalities Imposing Sales and Use Taxes

Table of Contents

A. Municipal Sales and Use Tax Check List.....	1
B. Statutory Authority to Impose Sales and Use Taxes.....	1
C. Estimating Revenue Yield of a Municipal Sales and Use Tax.	2
D. Boundaries of Municipality.....	3
E. Boundary Database	3
F. Rate Table	4
G. Required Information.....	4
H. Elements of Municipal Sales and Use Tax Ordinance.....	5
I. Special Revenue Fund or Account.....	7
J. Effective Date of Ordinance.....	8
K. When will municipality receive sales and use tax dollars.	8
L. Municipal Sales and Use Tax is in addition to other municipal taxes.	9
M. References.....	10
N. Appendices.....	10

Imposing and successfully implementing a municipal sales and use tax can be a fairly complex process. The purpose of this publication is to assist municipalities in understanding what is required.

A. Municipal Sales and Use Tax Check List.

See appendix A.

B. Statutory Authority to Impose Sales and Use Taxes

All municipalities have authority to impose sales and use taxes pursuant to W. Va. Code §§ 8-13C-4 and 5.

However, if the municipality imposes a business and occupation tax, then municipality is required by W. Va. Code § 8-13C-4(b) to repeal its business and occupation tax in order have authority to impose a municipal sales and use tax, at a rate not to exceed one percent (1%). In most instances, the revenue generated by a municipal business and occupation tax substantially exceeds the revenue that would be generated by a one percent sales and use tax. Consequently, municipalities that impose a business and occupation tax often cannot afford to impose a sales tax pursuant to W. Va. Code § 8-13C-4.

A number of municipalities that impose business and occupation taxes have applied to the Municipal Home Rule Board to participate in the Municipal Home Rule Pilot Program established in W. Va. Code § 8-1-5a and for authority to impose a one percent municipal sales and use tax pursuant to Section 5a.

Section 8-1-5a(i)(14) allows municipalities that participate in the Municipal Home Rule Pilot Program and that impose a business and occupation tax to, with the approval of the Municipal Home Rule Board, enact a municipal sales and use tax, at a rate not to exceed one percent, provided the municipality reduces or eliminates its business and occupation tax.

The statute does not define the term “reduces.”

The statute does provide that if after reducing its business and occupation tax the municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated, “it shall eliminate the municipal sales tax.” W. Va. Code § 8-1-5a(i)(14).

The Attorney General’s Office has opined that the business and occupation tax reduction must take effect on the same day that the municipal sales and use tax begins to be collected. See letter dated June 30, 2015 to Robert S. Kiss, Secretary of Revenue and Chair of the Municipal Home Rule Board signed by Patrick Morrissey, Attorney General.

C. Estimating Revenue Yield of a Municipal Sales and Use Tax.

Businesses that have multiple business locations in West Virginia file a single sales and use tax return reporting taxable sales and remitting sales and use tax for all locations of the business in West Virginia, either on a monthly, quarterly or annual basis, depending the annual gross sales of the business. Additionally, remote sellers that only ship products into West Virginia and have sales across the state file one statewide periodic sales tax return. Based on recent data these unknown factors can account for anywhere from 25% to 75% of collections for a municipality. Consequently, the State Tax Department does not have data to assist a municipality that is trying to estimate the revenue a one percent sales and use tax might generate.

Municipalities that impose a municipal business and occupation tax have more information to use when estimating sales and use tax revenues than do municipalities that do not impose a business and occupation tax.

Municipalities that impose a business and occupation tax can prepare a reasonable estimate of what a municipal sales tax will generate by starting with gross income reported under the retail sales classification of its business and occupation tax, by all businesses doing business in the municipality, during the preceding calendar year. From this number, the municipality should subtract:

1. Estimated gross income from sales of motor vehicles,
2. Estimated gross income from sales of motor fuel,
3. Estimated gross income from sales of prescription drugs, and
4. Estimated gross income from sales of food intended for human consumption

sold by grocery stores and convenience stores that are exempt from State sales tax.

Net gross income multiplied by the proposed municipal sales and use tax rate should produce a conservative, but reasonable, estimate of the municipality's sales and use tax once the municipal tax is fully implemented.

D. Boundaries of Municipality.

It is important for the municipality to know and be able to identify where its corporate boundaries are located. This is because only transactions sourced to a location that is within the municipality can be subject to that municipality's sales and use tax.

The municipality should appropriately mark the boundaries to facilitate compliance with the municipality's sales and use taxes, by persons doing business in the municipality.

For example, a pizza place located outside the municipality that regularly delivers pizza to addresses within the municipality should be collecting that municipality's sales and use tax on those sales. Similarly, if a pizza place located within the municipality is delivering pizza to addresses located outside the municipality, that municipality's sales and use tax should not be added to the purchase price of the pizza. Only those sales sourced to the municipality are subject to that municipality's sales and use tax.

The municipality must provide to the Tax Commissioner a map showing the geographic boundaries of the municipality.

Vendors making sales over the Internet or by telephone or by catalogue currently use the 9-digit zip code of the delivery address to determine what rate of State and municipal sales and use taxes to charge the customer. The municipality should be aware 9-digit zip codes often cross municipal boundary lines. When the 9-digit zip code is located, in part within the municipality and in part outside the municipality, the rate of municipal sales and use taxes applicable to Internet, telephone and catalogue sales made to customers with addresses in that 9-digit code will be zero.¹

At some point, the current system using 9-digit zip codes needs to be replaced by an address based system, or GIS system, but that is expensive and the State Tax Department does not currently have the resources to develop a replacement system.

E. Boundary Database.

The municipality will need to prepare a boundary database and timely submit the database to the State Tax Commissioner in the format required by the Tax Commissioner.

¹ Sometimes the 9-digit zip code will partially be in Municipality A and partially be in Municipality B. When both municipalities impose a 1% sales tax, Internet retailers, telemarketers and catalogue retailers collect the 1% municipal sales and use taxes and remit the tax collected to the proper municipality.

The database consists of all of the 9-digit zip codes located in whole, or in part, within the corporate limits of the municipality. The first column of which should contain the five-digit zip code, the second column should contain all four digit extensions.

The United States Postal Service established 5-digit and 9-digit zip codes to facilitate delivery of the mail. Consequently, zip codes often cross geographic boundary lines.

The boundary database is currently provided in an excel spread sheet.

For each 9-digit zip code located in whole or in part within the municipality, the municipality needs to identify the lowest code and the highest four-digit code extension in that particular 9-digit zip code area.

F. Rate Table

The rate table along with the boundary database will be used by persons making sales of tangible personal property or taxable services over the Internet, by catalogue or by telemarketing when determining the amount of West Virginia State and local sales and use taxes to charge the customer.

The tax computation rules provide that when a 9-digit zip code is located partially within and partially without a municipality, the combined State and local sales and use tax rate charged customers in that 9-digit zip code is the lowest rate applicable to persons in the district. For example, if a 9-digit zip code is located partially within a municipality that imposes a one percent sales and use tax and partially in an unincorporated area, the combined State and local sales tax rate applicable to that 9-digit zip code area is six percent (6%). This is because the Internet retailer, for example, has no way of knowing whether a particular 9-digit zip code is located within or outside the municipality that imposes a one percent sales and use tax.

G. Required Information.

The municipality must furnish to the State Tax Commissioner the following information at least six months before the July 1st start date² on which the Tax Commissioner will begin to collect that municipality's sales and use tax:

1. A certified copy of its adopted sales and use tax ordinance.
2. If the municipality imposes a business and occupation tax, a certified copy of its

² The Tax Commissioner has filed in the State Register an emergency amendment to 110 CSR 28, which would allow collection of municipal sales and use taxes to begin on either a January 1st or July 1st that begins at least 180 days after a certified copy of the municipal sales and use tax ordinance is provided to the Tax Commissioner. The Secretary of State has not yet ruled on this emergency rule.

adopted business and occupation tax ordinance eliminating³ or reducing its business and occupation tax and the effective date of the reduction.

3. A copy of its rates and boundaries database in the format required by the Tax Commissioner.

4. A map showing the boundaries of the municipality.

5. Contact information for the name of an employee or officer of the municipality to contact regarding municipal sales and use tax matters:

Name:

Mailing address:

Telephone number:

Email address:

H. Elements of Municipal Sales and Use Tax Ordinance.

1. The municipal sales and use tax base must be identical to the State sales and use tax base except that, municipalities may not tax:

a) sales of motor vehicles,

b) sales of motor fuels, or

c) satellite television service and any other transaction where local taxation is preempted by federal law.

Additionally, the ordinance must provide for the municipal sales and use tax base to automatically update and conform with any changes in the State sales and use tax base.

2. Exemptions and exclusions from the municipal sales and use tax must be

³ If municipal sales and use taxes are imposed pursuant to W. Va. Code § 8-13C-4 and 5, the business and occupation tax must be repealed before the municipality has authority to impose a municipal sales and use tax. If the municipality is a home rule municipality and is imposing its sales and use tax pursuant to W. Va. Code § 8-1-5a, the municipality must adopt an ordinance reducing its business and occupation tax in accordance with its home rule plan approved by the Municipal Home Rule Board in order to lawfully impose a municipal sales and use tax. This may be done in separate ordinances adopted on the same day. The ordinances can be made effective upon passage by the governing body of the municipality but the effective date language should defer the business and occupation tax rate reduction until the day the vendors and Tax Commissioner begin to collect the municipalities sales and use tax. The effective date language in the municipal sales and use tax ordinance, may also provide for the ordinance to be effective upon passage by the governing body provided the effective date language defers imposition, administration, collection, and enforcement of the municipal sales and use tax until the first day of July or January that begins at least 180 days after a certified copy of the municipal sales and use tax ordinance is provided to the Tax Commissioner.

identical to those in the State sales and use tax statutes. Additionally, the municipal exemptions and exclusions must automatically conform with any changes in the State exemptions and exclusions.

3. The definitions of terms used in the municipal sales and use tax must automatically conform with changes in the State sales and use tax definitions.

4. The municipality must allow as a credit against its municipal sales and use tax the amount of sales and use taxes lawfully paid to another municipality: *Provided*, that the credit allowed may not exceed the tax imposed by the second municipality.⁴

5. The ordinance must provide for the municipal sales and use tax to be administered, collected, and enforced by the Tax Commissioner.

6. The ordinance must incorporate by reference the provisions of the West Virginia Tax Procedure and Administration Act codified in W. Va. Code § 11-10-1 *et seq.*

7. The ordinance must incorporate by reference the provisions of the West Virginia Tax Crimes and Penalties Act codified in W. Va. Code § 11-9-1 *et seq.*, except that the penalties for criminal violations of the municipal sales and use tax may not exceed the maximum penalties a municipality may impose.

8. The municipal sales and use tax will first be collected by the Tax Commissioner on the first day of July that begins 180 days after the Tax Commissioner is provided with a certified copy of the municipal sales and use tax ordinance adopted by the municipality.⁵

Note 1: The ordinance should be made effective in accordance with the charter or other ordinance of the municipality but include a delayed internal effective date for imposition, collection and payment of the tax until the applicable first day of July as provided in 110 CSR 28.

Note 2: The State Tax Department is proposing an emergency rule that would allow municipal sales and use taxes to be collected by the Tax Commissioner on either the first day of July, or the first day of January, that begins 180 days after the Tax Commissioner is provided with a certified copy of the municipal sales and use tax ordinance adopted by the municipality.

9. The ordinance should recognize that the Tax Commissioner will charge an administrative fee for administering, collecting, and enforcing the municipality's sales and

⁴ For municipal sales and use tax purposes, sales and use taxes imposed by the District of Columbia are treated as a state imposed sales and use tax. Accordingly, no credit is allowed against municipal sales and use taxes for sales and use taxes paid to the District of Columbia.

⁵ The Tax Commissioner filed an emergency amendment to 110 CSR 28 that allows municipal sales and use taxes to be collected beginning January 1st provided a certified copy of the ordinance imposing the tax is provided to the Tax Commissioner at least 180 days prior to the January 1st date. That emergency amendment was approved by the Secretary of State on July 20, 2017.

use tax.

10. Ordinarily, the net collections of municipal sales and use taxes would be deposited in the General Revenue Fund or Account of the municipality. However, since sales and use tax collections are a new source of revenue for the municipality, the governing body of the municipality may elect in the sale and use tax ordinance to deposit these collections in a special revenue account that is separate and apart from the municipality's General Revenue Fund or Account. Under the special fund doctrine recognized by the West Virginia Supreme Court of Appeals, the proceeds in the special revenue account could be then be used in whole, or in part, to pay debt service on revenue bonds secured by funds in the special revenue account. See discussion below.

Caveats:

- a) If made, the election to deposit sales and use tax dollars in a special revenue fund or account must be made before any sales and use tax collections are deposited in the municipality's General Revenue Fund or Account.
- b) It is advisable for the municipality to consult with a municipal bond lawyer or public finance lawyer before proceeding down this path.

I. Special Revenue Fund or Account

Because municipal sales and use tax collections are a new source of revenue for the municipality, the municipality may elect to deposit some, or all, of its municipal sales and use tax collections into a special revenue fund or account rather than into its general revenue fund or account. Under the Special Revenue Fund Doctrine adopted by the West Virginia Supreme Court, the dollars deposited in the special revenue fund may then be used to pay debt service on revenue bonds issued to finance certain capital improvements secured by monies in the special revenue fund, while the use of general revenue funds to pay such debt service may require a special election.

Several municipalities currently use this tool to finance capital improvements. For example, the City of Charleston deposits its sales and use tax collection in a special revenue fund. The City issued revenue bonds to finance capital improvements to its civic center secured by a first lien on its special revenue fund.

The decision to deposit sales and use tax collections in a special revenue fund must be made **before** any municipal sales and use tax dollars are deposited in the municipality's general revenue fund.

Caveat. Because municipal bond financing is complex and specialty area of the law, we encourage a municipality considering whether to use the special fund doctrine to consult with a lawyer who practices in the municipal bond or public finance area of the law before drafting an ordinance utilizing the special fund doctrine.

If properly structured, the governing body of the municipality can still periodically transfer to the general revenue fund dollars in the special revenue fund not needed to pay debt service.

J. Effective Date of Ordinance.

The ordinance reducing or eliminating the municipality's business and occupation tax⁶ and the ordinance imposing a municipal sales and use tax should be made effective in accordance with the charter of the municipality or an ordinance previously adopted by the governing body of the municipality governing effective dates of ordinances.

The effective date language in each ordinance should include language that delays the actual reduction or elimination of the business and occupation tax until the day the municipal sales and use tax is administered, collected and enforced by the Tax Commissioner, which, at the election of the municipality is either January 1st or July 1st that begins at least 180 days after the Tax Commissioner is provided with a certified copy of the municipal sales and use tax ordinance. See emergency amendment to legislative rule 110 CSR 28 (approved by the Secretary of State's Office on July 20, 2017).

For example, the effective date provision in the business and occupation tax ordinance might read:

This ordinance shall take effect upon its adoption by the governing body of the municipality, provided that the current business and occupation tax rates shall remain in effect until the January 1st [or July 1st] on which the municipal sales and use tax is imposed and collected by the Tax Commissioner.

For example, the effective date provision in the municipal sales and use tax ordinance might read:

This ordinance shall take effect upon its adoption by the governing body of the municipality, provided that imposition, collection and payment of the tax shall be delayed until the Tax Commissioner begins to administer, collect and enforce the tax as provided in 110 CSR 28.

K. When will municipality receive sales and use tax dollars.

Large vendors remit collected sales tax monthly, by the 20th day of the month following the month in which the tax was collected. Some small business may remit collected sales tax on a quarterly basis, by the 20th day of the month following the close

⁶ A municipality that is a home rule municipality imposes its sales and use tax pursuant to W. Va. Code § 8-1-5a must first reduce or eliminate its business and occupation tax in accordance with its home rule plan, or plan amendment, previously approved by the Municipal Home Rule Board. A municipality that imposes a sales and use tax pursuant to W. Va. Code § 8-13C-4 and 5, must eliminate its business and occupation tax before adopting a sales and use tax ordinance.

of the calendar quarter. Small business collecting \$600 or less of tax during a calendar year, file and annual sales and use tax return and remit collected tax by the 30th day of January following the close of the calendar year.

When the tax collected beginning July 1st the first transfer of collected sale and use taxes will likely be made to the municipality during the month of October following a July 1st start date for the tax and may be limited to taxes remitted to the Tax Commissioner during August and September. After the first transfer, the payments will become more regular.⁷

When the tax is collected beginning January 1st, the first transfer of collected sales and use taxes will likely be made to the municipality during the month of April following a January 1st start date for the tax and may be limited to taxes remitted to the Tax Commissioner during February and March. After the first transfer, the payments will become more regular.

Note: When vendors remit tax to the Tax Commissioner depends upon the amount of tax they collect and remit. Larger vendors remit tax on a monthly basic, by the 20th day of the month following the month in which they collect the tax. Smaller vendors may remit tax on a quarterly basis, by the 20th day of the month following the close of the calendar quarter. Very small vendors may remit tax on an annual basis, by January 30th following the close of the calendar year.⁸

At or around the time of distribution, the Tax Department will provide a report to the municipality containing the amount of tax collected, the amount of administrative fee retained, and the amount distributed for the period.

More detailed information about the taxpayer base is confidential and not subject to general disclosure. However, under W.Va. Code sec. 11-10-5d(j), the mayor of a municipality may request additional information that may be provided to a duly authorized agent of a municipality. The information that is available through such request is limited to a report containing the name of all taxpayers filing returns within a three-month distribution period, the tax period of the filing and the amount remitted by the taxpayer during the distribution period

L. Municipal Sales and Use Tax is in addition to other municipal taxes.

The municipal sales and use tax is collect from customers in addition to other taxes

⁷ When the municipality imposing a sales and use tax is also required to eliminate or reduce its business and occupation tax in order to impose a sales and use tax, the municipality should plan for possibility that it may have a cash flow problem during the first three or four months that the municipal sales and use tax is in effect.

⁸ When a vendor annually remits sales and use taxes in excess of \$100,000 taxes collected during the first 15 days of June must be remitted to the Tax Commissioner by June 20th. This accelerated payment also affects municipal sales and use tax collections and results in taxes otherwise due July 20th being remitted by June 20th of the preceding fiscal year.

imposed by the municipality. The other taxes may include:

1. A municipal public utilities tax imposed pursuant to W. Va. Code § 8-13-5a.
2. A municipal amusement tax imposed pursuant to W. Va. Code § 8-13-6.
3. A municipal excise tax imposed on purchases of wine and intoxicating liquor in sealed containers pursuant to W. Va. Code § 8-13-7.
4. A municipal hotel occupancy tax imposed pursuant to W. Va. Code § 7-18-1.

M. References.

W. Va. Code § 8-1-5a
W. Va. Code § 8-13C-1 *et seq.*
W. Va. Code § 11-15-1 *et seq.*
W. Va. Code § 11-15A-1 *et seq.*
W. Va. Code § 11-15B-1 *et seq.*
W. Va. Code St. R. § 110-28-1 *et seq.*

N. Appendices.

1. Municipal sales and use tax checklist. Appendix A
2. Model municipal sales and use tax ordinance – Home rule Municipalities. Appendix B.

Model municipal sales and use tax ordinance – Non-Home Rule Municipalities.
Appendix C.

**APPENDIX A
MUNICIPAL SALES AND USE TAX CHECKLIST**

Name of Municipality:

Mailing address:

Name of contact and contact information

Name:

Mailing address:

Telephone number:

Email address:

Municipal Sales and Use Tax Ordinance

1. Was a draft of the sales and use tax ordinance submitted to the Tax Commissioner for review prior to first reading?

Yes _____ No _____

If the Department requested changes, were the changes made?

Yes _____ No _____

If no, please explain:

2. Date the governing body read the proposed sales and use tax ordinance a first time.

3. Date of the public hearing prior to second reading required by W. Va. Code § 8-11-4(a)(2).

4. Did the governing body adopt any amendments to the municipal sales and use tax ordinance.

Yes _____ No _____

If yes, please briefly describe the amendments.

5. Date the municipal sales and use tax ordinance was adopted.

6. What is the effective date of the municipal sales and use tax ordinance?

7. What is the internal effective date for imposition and collection of the municipal sales and use tax?

8. Please provide a certified copy of the municipal sales and use tax ordinance adopted by the governing body of the municipality.

9. If the municipality imposes a business and occupation tax (B&O tax):

a. *Non-Home Rule Municipalities.* --Was the business and occupation tax eliminated as required by W. Va. Code § 8-13C-4(b) before the municipal sales and use tax ordinance was adopted?

Yes _____ No _____

b. *Home Rule Municipalities.* -- Was the municipal B & O tax been reduced as described in the municipal home rule plan, or plan amendment, approved by the Municipal Home Rule Board?

Yes _____ No _____

10. If 9, above, is answered yes, please provide a certified copy of the ordinance adopted by the governing body amending the B & O tax.

11. Has a map of the corporate boundaries of the municipality been provided to the State Tax Department?

Yes _____ No _____

12. Has the municipality furnished the State Tax Department with the municipality's database in an Excel file.

Yes _____ No _____

13. Has the municipality furnished the State Tax Department with the name of the municipal employee, and his or her contact information, to contact regarding municipal sales and use taxes.

Yes _____ No _____

APPENDIX B

MODEL MUNICIPAL ORDINANCE

FOR CITIES WITH AUTHORITY UNDER W. Va. Code § 8-1-5a

ARTICLE ____ . MUNICIPAL SALES AND USE TAXES.

Table of Contents

[§ 1. City Council\] Findings.](#)..... 1
[§ 2. Definitions.](#) 2
[§ 3. Imposition of Municipal Sales and Service Tax.](#) 5
[§ 4. Imposition of Municipal Use Tax.](#)..... 5
[§ 5. Calculation of Tax on Fractional Parts of Dollar.](#) 6
[§ 6. State and Local Tax Bases.](#) 6
[§ 7. Exceptions.](#)..... 6
[§ 8. Credit Against Municipal Use Tax.](#) 7
[§ 9. Tax cumulative.](#) 8
[§ 10. Local Rate and Boundary Data Base; Changes.](#) 8
[§ 11. State level administration.](#) 9
[§ 12. Administrative procedures.](#) 10
[§ 15. Automatic Updating.](#) 11
[§ 16. Deposit of Taxes Collected in General Revenue Fund.](#)..... 11
[Alternative § 16. Deposit of Taxes Collect in Special Revenue Fund.](#)..... 11
[§ 17. Issuance of Revenue Bonds.](#) 12
[§ 18. Severability and Savings Clause.](#) 13
[§ 19. Effective Date.](#) 14
[§ 20. Notification of Tax Commissioner.](#)..... 14
[CAVEATS:](#) 15

§ 1. City Council] Findings.

(a) The Municipal Home Rule Board on [Insert Date], approved the home rule plan submitted by the City of _____, West Virginia, thereby allowing the City to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code § 8-1-5a without the limiting restrictions in W. Va. Code § 8-13C-1 *et seq.* In accordance with its home rule plan, the City Council hereby finds and declares that the adoption by this City 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 City's sales and use taxes, (2) simplify preparation of municipal sales and use tax returns by taxpayers, and (3) improve enforcement of the City's sales and use taxes.

(b) The City Council does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

§ 2. Definitions.

(a) Terms used in this article or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this article shall have the meanings ascribed to them in articles nine, ten, fifteen, fifteen-a and fifteen b, chapter eleven of the Code of West Virginia, 1931, as amended.

(b) As used in this article:

(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) "City" or "this City" means the City of _____, 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) “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.

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

(6) “Purchase price” means the measure subject to the taxes imposed by this article and has the same meaning as sales price;

(7) “Purchaser” means a person who purchases tangible personal property, custom software or a service taxed by this article.

(8) “Sale,” “sales” or “selling” have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.

(9) “Sales and use taxes” means the taxes imposed by sections [3] and [4] of this article.

(10) “Sales price” has the meaning ascribed to that term in article fifteen-b, chapter eleven of the Code of West Virginia.

(11) “Sales tax” means the tax levied by section [3] of this article.

(12) “Service” or “selected service” have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.

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

(14) “State use tax” means the tax levied by article fifteen-a, chapter eleven

of the Code of West Virginia, as amended.

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

(16) “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.

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

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

(19) “Use” for purposes of the tax imposed by section [4] of this article 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 City for use thereafter solely outside this City.

(20) “Use tax” means the tax imposed by section [4] of this article.

(21) “Vendor” means any person engaged in this City in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

§ 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 this City 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 fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, are paid to the tax commissioner. The rate of tax shall be one percent of the sales price, as defined in section two of this article 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 this city 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 City in the same manner that state use tax is collected under article fifteen-a and article fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, and remitted to the tax commissioner. The rate of tax

shall be one percent of the purchase price, as defined in section two of this article, of the tangible personal property, custom software or taxable service used within the City.

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

The tax computation under section [3] and section [4] of this article 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 four and rounded down to the lower whole cent whenever the third decimal place is four 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 article shall be identical to the sales and use tax base of this State except as provided in section [7] of this article, unless otherwise prohibited by federal law, as required by W. Va. Code § 11-15B-34.

§ 7. Exceptions.

The taxes imposed by this article do not apply to:

(1) The sale or use of motor fuel, as defined in article fourteen-c, chapter eleven of the Code of West Virginia, 1931, as amended.

(2) The sale or use of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, is paid.

(3) The purchase or use of any tangible personal property, custom software or

service that the [city] [municipality] 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 article does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia.

(5) The use tax imposed by section [4] of this article 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 article 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 article on the use of the tangible personal property, custom software or results of the taxable service in this City.

(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 municipality 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 50 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 article 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 this City pursuant to section 5a, article 13, chapter 8 of the W. Va. Code; the amusement tax imposed by this City pursuant to section 6, article 13, chapter 8 of the W. Va. Code; the tax on sales of alcoholic liquors and wine imposed by this City pursuant to section 6, article 13, chapter 8 of the W. Va. Code; the hotel occupancy tax imposed by this City 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 [recorder] 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 City to the proper rate of tax. If any nine-digit zip code area includes area outside this City, 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 City in that nine-digit zip code area, the seller shall collect the tax imposed by section [3] of this article.

(b) Whenever boundaries of the City change, whether by annexation or de-annexation, the [recorder] 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 City, or an ordinance removing property from the corporate limits of the City may not take effect any sooner than the first day of a calendar quarter that begins 60 days after the City provides written notice to the tax commission of a change in the municipal boundaries.

(c) The nine-digit database shall be maintained by the City 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 City.

§ 11. State level administration.

(a) The tax commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this article as provided in W. Va. Code § 8-13C-6 and § 11-15B-33. The city may enter into a written agreement with the tax commissioner that will allow employees of the City auditing a vendor whose primary business location is in the City for compliance with the City's business and occupation tax to also audit that business location for compliance with the sales and use tax laws of this State and this City and obligate the City to share that information with the tax commissioner.

(b) The tax commissioner may retain from collections of the taxes imposed by this

article 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 article, minus any fee for collecting, enforcing and administering taxes retained under this section, in the subaccount for this [city] [municipality] 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 City shall be remitted at least quarterly by the State Treasurer to the City [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 ten, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in article thirteen-c, chapter eight of the Code of West Virginia, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article, 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 nine, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the municipal sales and use taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article, as provided

in W. Va. Code § 8-13C-6: *Provided*, that the criminal penalties imposed upon conviction for a criminal violation of this article may not exceed the maximum penalties allowed by law for a similar violation of the ordinances of this City.

§ 15. 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 article, to the extent they are applicable to the taxes imposed by this article.

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

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

Alternative § 16. Deposit of Taxes Collect in Special Revenue Fund.

(a) There is hereby established a special revenue fund in the City Treasury which shall be designated and known as the City Sales and Use Tax Fund. The City Sales and Use Tax Fund shall consist of:

- (1) All revenues received from collection of the City's sales and use taxes, including any interest, additions to tax and penalties deposited with the City [treasurer];
- (2) All appropriations to the fund;
- (3) All interest earned from investment of the fund; and
- (4) Any gifts, grants or contributions received and placed by the City into the

City Sales and Use Tax Fund.

(b) Revenues in the City Sales and Use Tax Fund shall not be treated by any person to be a general revenue of the City. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner and consistent with the priorities set forth for in subsection (c) of this section.

(c) Revenues in the City Sales and Use Tax Fund shall be used:

(1) First, to satisfy the debt service requirements each fiscal year on any bonds issued by, or other obligations incurred by, the City, from time to time, allocated or tied to such dedicated revenue account including any refunding bonds; [[INSERT HERE PURPOSES FOR WHICH SPECIAL REVENUE WILL BE USE, e.g., to finance City civic improvement projects; as well as city-wide infrastructure and economic development projects; and, for any other economic development or public safety projects, including the funding of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which secure bonds issued to finance improvements to such projects;]

(2) Second, to pay for [capital improvement projects] on a pay as you go basis; and

(3) Third, after providing for payment of first priority items, any unencumbered revenue in the City Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the City's General Revenue Fund or Account.

§ 17. Issuance of Revenue Bonds.

[May only be included when tax is deposited in Special Revenue Fund.]

The City shall have the power and authority to issue its revenue bonds or other

obligations or refunding revenue bonds or other obligations, as appropriate, under and pursuant to Chapter 8, Article 16 or other appropriate provisions of the West Virginia Code as may be applicable from time to time (the "Bond Act") for the purposes of financing or refinancing costs of infrastructure improvements or economic development activities and projects within the City. The City may pledge or otherwise utilize the collections of the municipal sales and use taxes imposed by this article and the funds on deposit from time to time in the City Sales and Use Tax Fund to satisfy the debt service requirements and any prior debt service requirements deficit each fiscal year on, and to fund or replenish any required reserves in accordance with the bond documents for, any bonds or other obligations issued by the City from time to time, including any refunding bonds, to finance or refinance infrastructure improvements or economic development activities and projects within the City, including the funding or replenishing of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which repay the debt service or otherwise secure bonds or other obligations issued to finance or refinance infrastructure improvements or economic development activities and projects within the City. The City may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other obligations and in connection therewith it is hereby clarified and directed that the municipal sales and use taxes imposed by this article shall not be considered to be taxation solely for the purposes of and as contemplated by Chapter 8, Article 16 of the West Virginia Code.

§ 18. Severability and Savings Clause.

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or

applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. The City Council declares that it would have adopted this article 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.

§ 19. Effective Date.

(a) This article shall become effective [upon its adoption by the City Council of this City on [Insert Date of Adoption] [or as provided in the charter of the City] on [Insert Effective Date]]. However, the City Council hereby suspends imposition and collection of the municipal sales and use taxes imposed by this article until July 1, [2019], 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.* [or until January 1, 2019, or such later first day of January as required by legislative rule codified in W. Va. code St. R. § 110-28-1 *et seq.*]

§ 20. Notification of Tax Commissioner.

Upon adoption of this ordinance by City Council, the city [recorder, finance director or city manager] 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 article, along with a description of the boundaries of the City, and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this Article.

CAVEATS:

1. The decision to deposit sales use tax revenue in a special fund and use the proceeds to pay debt service must be made before the ordinance imposing the taxes is adopted and before any sales and use tax collections are deposited into the General Revenue Fund or Account of the City.

2. If the City wants to use the language of alternative Section 16 and Section 17 of this model ordinance, we suggest that the City consult with bond counsel prior to adopting its sales and use tax ordinance.

APPENDIX C

MODEL MUNICIPAL ORDINANCE

FOR CITIES & MUNICIPALITIES WITH AUTHORITY UNDER W. Va. Code § 8-13c-4

ARTICLE ____ . MUNICIPAL SALES AND USE TAXES.

Table of Contents

[§ 1. \[Governing Body/City Council\] Findings.](#) 1

[§ 2. Definitions.](#) 2

[§ 3. Imposition of Municipal Sales and Service Tax.](#) 5

[§ 4. Imposition of Municipal Use Tax.](#)..... 5

[§ 5. Calculation of Tax on Fractional Parts of Dollar.](#) 6

[§ 6. State and Local Tax Bases.](#) 6

[§ 7. Exceptions.](#)..... 6

[§ 8. Credit Against Municipal Use Tax.](#) 7

[§ 9. Tax cumulative.](#)..... 8

[§ 10. Local Rate and Boundary Data Base; Changes.](#)..... 8

[§ 11. State level administration.](#) 9

[§ 12. Administrative procedures.](#)..... 10

[§ 15. Automatic Updating.](#)..... 11

[§ 16. Deposit of Taxes Collected in General Revenue Fund.](#)..... 11

[Alternative § 16. Deposit of Taxes Collect in Special Revenue Fund.](#)..... 11

[§ 17. Issuance of Revenue Bonds.](#) 13

[§ 18. Severability and Savings Clause.](#) 14

[§ 19. Effective Date.](#)..... 14

[§ 20. Notification of Tax Commissioner.](#)..... 14

[CAVEATS:](#) 15

§ 1. [Governing Body/City Council] Findings.

[When authority for imposing tax is W. Va. Code § 8-13C-4 and 5.]

(a) The [Governing Body/City Council] of the [City/Municipality of _____], West Virginia, hereby finds and declares that the adoption by this [City/Municipality] 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 [Governing Body/City Council] does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

§ 2. Definitions.

(a) Terms used in this article or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this article shall have the meanings ascribed to them in articles nine, ten, fifteen, fifteen-a and fifteen b, chapter eleven of the Code of West Virginia, 1931, as amended.

(b) As used in this article:

(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) "City" or "this City" means the City of _____, 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 _____, West Virginia. [Note: use either (2) or (4) but not both and

renumber.]

(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 article 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 article.

(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 article.

(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 article.

(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 article and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.

(17) “Tax Commissioner” means the Chief Executive Officer 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 article 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 [City/Municipality] for use thereafter solely outside this [City/Municipality].

(21) “Use tax” means the tax imposed by section [4] of this article.

(22) “Vendor” means any person engaged in this [City/Municipality] in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

§ 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 this [City/Municipality] 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 fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, are paid to the tax commissioner. The rate of tax shall be ____ [may not exceed one percent] of the sales price, as defined in section two of this article 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 this [City/Municipality] 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 [City/Municipality] in the same manner that state use tax is collected under article fifteen-a and article fifteen-b, chapter

eleven of the Code of West Virginia, 1931, as amended, and remitted to the tax commissioner. The rate of tax shall be ____ [may not exceed one percent] of the purchase price, as defined in section two of this article, of the tangible personal property, custom software or taxable service used within the [City/Municipality].

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

The tax computation under section [3] and section [4] of this article 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 four and rounded down to the lower whole cent whenever the third decimal place is four 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 article shall be identical to the sales and use tax base of this State except as provided in section [7] of this article, unless otherwise prohibited by federal law, as required by W. Va. Code § 11-15B-34.

§ 7. Exceptions.

The taxes imposed by this article do not apply to:

(1) The sale or use of motor fuel, as defined in article fourteen-c, chapter eleven of the Code of West Virginia, 1931, as amended.

(2) The sale or use of motor vehicles upon which the tax imposed by section three-

c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, is paid.

(3) The purchase or use of any tangible personal property, custom software or service that the [City/Municipality] 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 article does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia.

(5) The use tax imposed by section [4] of this article 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 article 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 article on the use of the tangible personal property, custom software or results of the taxable service in this [City/Municipality].

(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 municipality in which the sale occurred; and

(2) "Municipality" includes all 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 50 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 article 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 this [City/Municipality] pursuant to section 5a, article 13, chapter 8 of the W. Va. Code; the amusement tax imposed by this [City/Municipality] pursuant to section 6, article 13, chapter 8 of the W. Va. Code; the tax on sales of alcoholic liquors and wine imposed by this [City/Municipality] pursuant to section 6, article 13, chapter 8 of the W. Va. Code; the hotel occupancy tax imposed by this [City/Municipality] 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 [recorder] 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 [City/Municipality] to the proper rate of tax. If any nine-digit zip code area includes area outside this [City/Municipality], 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 [City/Municipality] in that nine-digit zip code area, the seller shall collect the tax imposed by section [3] of this article.

(b) Whenever boundaries of the [City/Municipality] change, whether by annexation or de-annexation, the [recorder] 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 [City/Municipality], or an ordinance removing property from the corporate limits of the [City/Municipality] may not take effect any sooner than the first day of a calendar quarter that begins 60 day after the [City/Municipality] provides written notice to the tax commission of a change in the boundaries of the [City/Municipality].

(c) The nine-digit database shall be maintained by the [City/Municipality] 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 [City/Municipality].

§ 11. State level administration.

(a) The tax commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this article 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 article 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 article, minus any fee for collecting, enforcing and administering taxes retained under this section, in the subaccount for this [City/Municipality] 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 [City/Municipality] shall be remitted at least quarterly by the State Treasurer to the [City/Municipal] [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 ten, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in article thirteen-c, chapter eight of the Code of West Virginia, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article, 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 nine, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the municipal sales and use taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article, as provided

in W. Va. Code § 8-13C-6: *Provided*, that the criminal penalties imposed upon conviction for a criminal violation of this article may not exceed the maximum penalties allowed by law for a similar violation of the ordinances of this [City/Municipality].

§ 15. 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 article, to the extent they are applicable to the taxes imposed by this article.

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

When the [City/Municipal] [treasurer] receives periodic distributions of municipal sales and use taxes from the State Treasurer, the [City/Municipal] [treasurer] shall promptly deposit the amount received in the general revenue fund or account of the [City/Municipality].

Alternative § 16. Deposit of Taxes Collect in Special Revenue Fund.

(a) There is hereby established a special revenue fund in the [City/Municipal] Treasury which shall be designated and known as the [City/Municipal] Sales and Use Tax Fund. The [City/Municipal] Sales and Use Tax Fund shall consist of:

(1) All revenues received from collection of the [City's/Municipality's] sales and use taxes, including any interest, additions to tax and penalties deposited with the [City/Municipal] [treasurer];

(2) All appropriations to the fund;

(3) All interest earned from investment of the fund; and

(4) Any gifts, grants or contributions received and placed by the [City/Municipality] into the [City/Municipal] Sales and Use Tax Fund.

(b) Revenues in the [City/Municipal] Sales and Use Tax Fund shall not be treated by any person to be a general revenue of the [City/Municipality]. Revenues in the [City/Municipal] Sales and Use Tax Fund shall be disbursed in the manner and consistent with the priorities set forth for in subsection (c) of this section.

(c) Revenues in the [City/Municipal] Sales and Use Tax Fund shall be used:

(1) First, to satisfy the debt service requirements each fiscal year on any bonds issued by, or other obligations incurred by, the [City/Municipality], from time to time, allocated or tied to such dedicated revenue account including any refunding bonds; [INSERT HERE PURPOSES FOR WHICH SPECIAL REVENUE WILL BE USE, e.g., to finance City civic improvement projects; as well as city-wide infrastructure and economic development projects; and, for any other economic development or public safety projects, including the funding of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which secure bonds issued to finance improvements to such projects;]

(2) Second, to pay for [capital improvement projects] on a pay as you go basis; and

(3) Third, after providing for payment of first priority items, any unencumbered revenue in the [City/Municipal] Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the [City's/Municipality's] General Revenue Fund or Account.

§ 17. Issuance of Revenue Bonds.

[May only be included when tax is deposited in Special Revenue Fund.]

The [City/Municipality] shall have the power and authority to issue its revenue bonds or other obligations or refunding revenue bonds or other obligations, as appropriate, under and pursuant to Chapter 8, Article 16 or other appropriate provisions of the West Virginia Code as may be applicable from time to time (the "Bond Act") for the purposes of financing or refinancing costs of infrastructure improvements or economic development activities and projects within the [City/Municipality]. The [City/Municipality] may pledge or otherwise utilize the collections of the municipal sales and use taxes imposed by this article and the funds on deposit from time to time in the [City/Municipal] Sales and Use Tax Fund to satisfy the debt service requirements and any prior debt service requirements deficit each fiscal year on, and to fund or replenish any required reserves in accordance with the bond documents for, any bonds or other obligations issued by the [City/Municipality] from time to time, including any refunding bonds, to finance or refinance infrastructure improvements or economic development activities and projects within the [City/Municipality], including the funding or replenishing of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which repay the debt service or otherwise secure bonds or other obligations issued to finance or refinance infrastructure improvements or economic development activities and projects within the [City/Municipality]. The [City/Municipality] may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other obligations and in connection therewith it is hereby clarified and directed that the municipal sales and use taxes imposed by this article shall not be considered to be

taxation solely for the purposes of and as contemplated by Chapter 8, Article 16 of the West Virginia Code.

§ 18. Severability and Savings Clause.

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. The [City Council/Governing Body] declares that it would have adopted this article 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.

§ 19. Effective Date.

(a) This article shall become effective [upon its adoption by the [City Council of this City/Governing Body of this Municipality] on [Insert Date of Adoption] [or as provided in the charter of the [City/Municipality]] on [Insert Effective Date]. However, the [City Council/Governing Body] hereby suspends imposition and collection of the municipal sales and use taxes imposed by this article until July 1, [2019], 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.* [or until January 1, 2019, or such later first day of January as required by legislative rule codified in W. Va. code St. R. § 110-28-1 *et seq.*]

§ 20. Notification of Tax Commissioner.

Upon adoption of this ordinance by the [City Council/Governing Body], the [City/Municipal] [recorder, finance director or city manager, etc.] 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 article, a map showing the boundaries of the [City/Municipality] along with a description of the boundaries of the [City/Municipality], and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this Article.

CAVEATS:

1. The decision to deposit sales use tax revenue in a special fund and use the proceeds to pay debt service must be made before the ordinance imposing the taxes is adopted and before any sales and use tax collections are deposited into the General Revenue Fund or Account of the City/Municipality.

2. If the City/Municipality wants to use the language of alternative Section 16 and Section 17 of this model ordinance, we suggest that the City/Municipality consult with bond counsel prior to adopting its sales and use tax ordinance.