WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Tax

TITLE-SERIES: 110-28

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Municipal Sales and Service and Use Tax Administration

CITE STATUTORY AUTHORITY: W. Va. Code §11-10-11c

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 237

Section §64-7-1(d)

Passed On 2/26/2018 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

March 26, 2018

This rule shall terminate and have no further force or effect from the following date:

03/26/2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jindalay Gh Jones -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

3/26/2018 9:52 AM

Office of West Virginia Secretary Of State

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TITLE 110
LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE

SERIES 28
MUNICIPAL SALES AND USE TAX ADMINISTRATION

§110-28-1. General.

1.1. Scope. -- This legislative rule explains and clarifies administrative and procedural requirements and characteristics of municipal sales and use taxes imposed under the provisions of W. Va. Code §8-1-5a and W. Va. Code §8-13C-1, *et seq.*

1.1.a. In recognition of:

The experience, knowledge, and technical, and legal expertise of the Tax Department;

The computer and logistical systems currently operated and maintained by the Tax Department;

The auditing and revenue processing resources of the Tax Department; and

The obvious cost efficiency and operational efficiencies of placing municipal sales and use tax administration under the exclusive authority of the Tax Department --

The Legislature has determined that the preeminent interest of all municipal sales and use tax jurisdictions is best served by empowerment of the Tax Commissioner, by law, to hold, maintain and exercise sole authority to administer the municipal sales and use tax.

1.1.b. Pursuant to Legislative intent that the Tax Department administer the municipal sales and use tax, this rule sets forth procedures and requirements for its administration.

1.1.c. Pursuant to Legislative intent that the General Fund not be burdened with costs of administration of the municipal sales and use tax, this rule sets forth procedures and requirements for statutorily mandated recovery of Tax Department costs incurred in its administration.

1.2. Authority. -- W. Va. Code §11-10-11c.

1.3. Effective Date. -- March 26, 2018

1.4. Filing Date. -- March 26, 2018

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on March 26, 2023.

§110-28-2. Definitions.

2.1. "Accumulated cost account" means the total pooled amount of all implementation costs and all

operating costs incurred by the Tax Department on and after the commencement date for recoverable cost accrual. The accumulated cost account is added to periodically as costs are incurred. The accumulated cost account is drawn down by the periodic cost recovery fee. After any periodic offset of the accumulated cost account by the periodic cost recovery fee or any other adjustment, any amount remaining in the accumulated cost account, carries forward into future periods, and may be further offset from time to time as the periodic cost recovery fee is applied in succeeding periods.

2.2 "Allocation numerator" means revenues of a specific revenue generating municipality for the period under the provisions, as applicable, of W. Va. Code §8-1-5a (Home Rule Pilot Plan) or W. Va. Code §8-13C-1 *et seq.* (Municipal sales and use tax), net of refunds and net of adjustments for filing errors, payment errors, and similar adjustments for the period, but before offset by the periodic cost recovery fee and before application of the reconciliation adjustment.

2.3 "Allocable revenues" means total net tax revenues, as defined in subsection 2.7. of this section, after offset by the periodic cost recovery fee and after application of the reconciliation adjustment. Allocable revenues are periodically distributed to each revenue generating municipality in proportion to the amount that each allocation numerator, as defined in subsection 2.2. of this section, for the period, bears to total net tax revenues for the period.

2.4. "District Excise tax" means collectively the special district excise tax authorized under W.Va. Code §7-22-1 *et seq.* and W.Va. Code §8-38-1 *et seq.*

2.5. "Implementation cost" means the total aggregate cost incurred by the Tax Department for initial implementation of tax administration for, or related to, all program municipalities. Implementation cost includes, but is not limited to, the initial costs incurred by the Tax Department to: hire and train personnel, configure record keeping systems, design forms, configure remittance processing systems and auditing and verification processes, implement and test computer programming, build and input municipal mapping and boundaries databases and zip code databases and configure and set up systems for distribution of revenues to each municipal taxing jurisdiction, and undertake other necessary costs to set up an administration system for collecting and distributing allocable revenues derived from municipal sales and use tax revenues for program municipalities.

2.6. "Municipal consumers sales and service tax and use tax" and "municipal consumers sales tax" and "municipal sales and service tax," "municipal use tax," "municipal sales tax" and "municipal sales and use tax" mean and refer to, collectively, any sales and use tax adopted by a municipality pursuant to the provisions of W.Va. Code §8-1-5a (Home Rule Pilot Plan) or W. Va. Code §8-13C-1 *et seq.* (Municipal sales and use tax).

2.7. "Net tax revenues" means the total pooled amount of all revenues under the provisions, as applicable, of W.Va. Code §8-1-5a (Home Rule Pilot Plan) or W.Va. Code §8-13C-1 *et seq.* (Municipal sales and use tax), of all revenue generating municipalities, for the period, net of refunds and net of adjustments for filing errors, payment errors, and similar adjustments for the period, and after application of the reconciliation adjustment for the period, but before offset by the periodic cost recovery fee.

2.8. "Operating cost" means the total aggregate cost incurred by the Tax Department for direct and indirect ongoing costs incurred to administer taxes imposed pursuant to the authority of W.Va. Code §8-1-5a (Home Rule Pilot Plan) or W.Va. Code §8-13C-1 *et seq.* (Municipal sales and use tax), for, or related to, all program municipalities. Operating cost includes, but is not limited to, costs of day to day operations for

processing and verifying tax returns and remittances, verifying and issuing tax refunds, processing and correcting filing and payment errors, calculating and issuing periodic distributions of tax revenues back to revenue generating municipalities, administering the interface between the state and Streamlined Sales and Use Tax administrators for municipal sales and use taxes, administering rate changes, changes and updates to municipal boundaries and changes and updates to the vendor database for program municipalities.

2.9 "Period," "the period" or "periodic" means and refers to the tax period or accounting period, applicable in the context of the usage of the term, and may refer to a monthly, quarterly, semi-annual or annual time period, or any other time period prescribed by the Tax Commissioner.

2.10. "Periodic cost recovery fee" -- The periodic cost recovery fee is retained by the Tax Department to recover those costs aggregated in the accumulated cost account. "Periodic cost recovery fee" means the lesser of:

2.10.a. The total balance in the accumulated cost account; or

2.10.b. 5% of net tax revenues for the period.

2.11. "Program municipalities" means all municipalities that have achieved full legal authorization to impose and implement municipal sales and use taxes under the provisions of West Virginia Code §8-1-5a (Home Rule Pilot Plan) or 8-13C-1 *et seq.* (Municipal sales and use taxes). A municipality becomes a program municipality only when actual tax collections have begun.

2.12. "Reconciliation adjustment" means the adjustment for the variance between the amount of the projected periodic cost recovery fee applied in a fiscal year versus the periodic cost recovery fee actually calculated for the fiscal year. The adjustment is the amount to be added to net tax revenues or subtracted from net tax revenues (among other adjustments) to determine allocable revenues as provided in subsection 4.12. of this rule.

2.13. "Revenue generating municipalities" means those municipalities that have generated tax revenues for the period under the provisions, as applicable, of W.Va. Code §8-1-5a (Home Rule Pilot Plan) or W.Va. Code §8-13C-1 *et seq.* (Municipal sales and use taxes), net of refunds and net of adjustments for filing errors, payment errors, and similar adjustments for the period, but before offset by the periodic cost recovery fee and before application of the reconciliation adjustment for the period.

§110-28-3. Tax Base.

3.1. Any municipal sales and use tax imposed under the authority granted by W. Va. Code §8-1-5a and W. Va. Code §8-13C-1 *et seq.* is subject to the following:

3.1.a. The base of a municipal sales and use tax imposed shall be identical to the base of the consumers sales and service tax imposed pursuant to W.Va. Code §11-15-1 *et seq.* on sales made and services rendered and on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality, subject to the following:

3.1.a.1. Except for the exemption provided in W.Va. Code §11-15-9f, all exemptions and exceptions from consumers sales and service tax apply to a municipal sales and use tax;

3.1.a.2. Sales of gasoline and special fuel are not subject to a municipal sales and use tax;

3.1.a.3. Sales of motor vehicles taxable under W.Va. Code §11-15-3c are not subject to a municipal sales and use tax; and

3.1.a.4. Sales that are exempt, as otherwise provided by law, are not subject to the municipal sales and use tax.

3.1.b. Any municipal sales and use tax imposed applies solely to sales and uses of tangible personal property, custom software and taxable services that are sourced to the municipality. The sourcing rules set forth in W. Va. Code §11-15B-1 *et seq.*, including any amendments thereto, apply to any municipal sales and use tax levied.

3.1.c. Whenever the state sales and use tax base and definitions in the West Virginia Code are amended by the Legislature, the updated base and terms will automatically apply to a municipality's sales and use tax ordinance, as required by W. Va. Code §8-13C-6(h).

3.1.d. Credit for sales taxes paid to another municipality. – A municipality's ordinance imposing a sales and use tax must allow for a credit against sales and use taxes that have been lawfully paid to another municipality, as required by W. Va. Code §8-13C-5a: Provided, That the credit allowed may not exceed the sales and use taxes otherwise due to the municipality allowing the credit.

§110-28-4. Administration and Collection of Tax.

4.1. A municipality that imposes a municipal sales and use tax may not administer or collect the tax, but shall use the services of the Tax Commissioner to administer, enforce and collect the municipal tax imposed in the same manner as the state consumers sales and service tax and use tax. All legislative, interpretive and procedural rules promulgated by the Tax Commissioner to administer and enforce the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of the W. Va. Code and the provisions of W.Va. CSR §110-15-1 *et seq.* apply to the implementation, administration, collection and enforcement of any municipal sales and use tax imposed and all provisions of those enactments shall be read in extenso herein.

4.2. Any municipal sales and use tax shall be imposed in addition to the consumers sales and service tax and use tax imposed pursuant to articles fifteen and fifteen-a, chapter eleven of the West Virginia Code on sales made and services rendered and on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality and, except as exempted or excepted, all sales made and services rendered and on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality shall remain subject to the tax levied by those articles.

4.3. A municipal sales and use tax is imposed in addition to any tax imposed pursuant to W. Va. Code §7-18-1 (hotel occupancy taxes), W.Va. Code §7-22-12 (county economic opportunity district tax), W.Va. Code §8-13-5a (public utility tax), W. Va. Code §8-13-6 (amusement tax), W. Va. Code §8-13-7 (tax on purchases of intoxicating liquor) and W.Va. Code §8-38-12 (municipal economic opportunity district tax).

4.4. Collection by Vendor. -- Each vendor shall collect from the purchaser municipal sales and use tax imposed upon each sale of tangible personal property and taxable service made or furnished_in the

municipality at the same time and in the same manner as each vendor collects from the purchaser the state consumers sales and service tax and use tax. Municipal sales and use tax shall be added to and constitute a part of the sales price.

4.5. Collection by Retailer. -- Every retailer engaging in business in this state and making sales of tangible personal property or taxable services for delivery into a municipality that has imposed a municipal sales and use tax or with knowledge, directly or indirectly, that the property or services are intended for use in such municipality, shall, at the time of making such sales, whether within or without the state, collect the municipal use tax from the purchaser at the same time and in the same manner that the retailer collects the state use tax from the purchaser. The tax shall be added to and constitute a part of the sales price and the retailer must give to the purchaser a sales receipt with the tax separately stated on the receipt.

4.6. Exceptions to Collection Requirements. -- Notwithstanding subsections 4.4 and 4.5 of this rule, a municipal sales and use tax need not be collected by the vendor or retailer with respect to a transaction if the state consumers sales and service and use tax need not be collected under the provisions of the state consumers sales and service and use tax laws, as if the provisions of those laws were set forth herein in extenso.

4.7. Payment of Use Tax. – When the purchaser of tangible personal property, custom software or a taxable service is required to pay state use tax measured by the purchase price and the use is in a municipality that imposes a municipal sales and use tax, municipal use tax must be paid on the purchase price to the Tax Commissioner at the same time that the state use tax is paid.

4.7.1. Exception. -- Situations will exist where a vendor located in West Virginia collects state sales tax at the time the sale is made but does not collect municipal sales tax because the sale took place at the vendor's store, which is not located in a municipality, or is not located in a municipality that imposes a sales tax. When the purchaser then uses or consumes the products in a municipality that does impose a sales and use tax, the user owes municipal sales and use tax based on the purchase price of the products used or consumed within the municipality.

Example 1. – A contractor purchases building materials for $500 from a seller located outside a municipality. The contractor pays state sales tax at the time of purchase. The contractor then uses the building materials in a construction project located within a municipality that imposes a municipal sales and use tax. The contractor must remit the municipal sales and use tax to the Tax Commissioner based on the $500 purchase price and the tax rate imposed by the municipality where the materials are used.

Example 2. – A business located in a municipality that imposes a municipal sales and use tax buys office supplies for $500 from a business located outside the municipality. The business pays state sales tax at the time of purchase. The business then uses the office supplies at its place of business in a municipality that imposes a sales and use tax. The business must remit municipal sales and use tax to the Tax Commissioner based on the $500 purchase price and the tax rate imposed by the municipality where the materials are used.

4.8. The Tax Commissioner may prescribe any processes, procedures, forms, schedules and other administrative requirements as determined to be useful or convenient for the efficient administration of the municipal consumers sales and service tax and use taxes addressed under this rule. The Tax Commissioner may require certified copies of the ordinance imposing the taxes, or changing the rate in a tax, along with a certified description of the boundaries of the municipality, the nine-digit zip codes for addresses located

within the boundaries of the municipality, the certified designation of a municipal official to whom all notices and communications are to be sent and from whom all notices and communications are to be sent, and certified documentation of other information the Tax Commissioner may need to administer, collect and enforce the taxes administered under this rule.

4.9. Periodic Cost Recovery Fee Administrative Notice -- To the extent that they may be reasonably subject to computation, the Tax Commissioner may annually issue an Administrative Notice, to be published on or before the first day of June of each year in the State Register, setting forth projections or determinations of:

4.9.a. The projected beginning and ending balances of the accumulated cost account for the fiscal year beginning 30 days after the June 1 issuance date;

4.9.b. The projected offsets and adjustments to the accumulated cost account projected for the fiscal year (principally the projected periodic cost recovery fee);

4.9.c. The reconciliation adjustment that will be applied to determine allocable revenues in the fiscal year;

4.9.d. Tax Department's projection of the amount of the periodic cost recovery fee that will be applied against net tax revenues during the fiscal year;

4.9.e. The projected amount of total allocable revenues for the fiscal year;

4.9.f. At the sole discretion of the Tax Commissioner, the projected allocable revenues to be distributed to each separate revenue generating municipality, on an annual or other periodic basis, determined by the Tax Commissioner, in the fiscal year; and

4.9.g. Any other data and information included by the Tax Commissioner.

4.10. The Tax Commissioner may elect to issue a notice other than, or in addition to, an Administrative Notice, and may elect to publish the Administrative Notice or any other notice, by means other than, or in addition to, the State Register.

4.11. The Tax Commissioner may solicit comments or recommendations regarding projections, determinations and data for a period of approximately 30 days, and in response to the comments or recommendations, may reissue the notice, as amended, on or about the July 1 next succeeding the initial publication date.

4.12. The periodic cost recovery fee is an amount retained from municipal consumers sales and service tax and use tax proceeds by the Tax Department to recover those costs reflected and aggregated in the accumulated cost account.

4.12.a. Instead of applying the periodic cost recovery fee to offset net tax revenues in a given period, the Tax Department may, at the election of the Tax Commissioner, apply a projected periodic cost recovery fee against net tax revenues for a given period and then may add or subtract a reconciliation adjustment to net tax revenues for the next succeeding period, to reconcile the difference between the projected periodic cost recovery fee as applied in that previous period and the periodic cost recovery fee actually attributable to

that previous period.

4.12.b. The periodic cost recovery fee shall not apply to the collection by the Tax Commissioner of the District Excise Tax provided for in W.Va. Code §7-22-1 *et seq.* and W.Va. Code §8-38-1 *et seq.* as that collection is not provided for pursuant to W.Va. Code §11-10-11c and other applicable provisions of law, as that fee is limited to the fee authorized by W.Va. Code §11-10-11b. Costs associated with collection of district excise taxes shall not be included in the Tax Commissioner's costs for administration, collection and enforcement of municipal sales and use taxes.

§110-28-5. Remittance of Tax.

5.1. No profit shall accrue to any person as a result of the collection of the municipal sales and use taxes regardless of the fact that the total amount of taxes collected may be in excess of the amount for which a person would be liable by the application of the levy set forth in the municipal ordinance imposing the tax, not to exceed one percent, to the gross proceeds of that person's sales. The total of all municipal sales and use taxes collected by any person shall be returned and remitted to the Tax Commissioner.

5.2. Any person who is required to collect and remit the state consumers sales and service tax or the use tax and who was also required to pay the taxes on purchases of tangible personal property or services for use or consumption in that person's business may use one of the following procedures when paying the municipal sales and use tax collected to the Tax Commissioner. The person:

5.2.a. May separately remit the amount collected and pay the amount due and owing on purchases made using the direct pay permit procedure.

5.2.b. May credit the amount of tax paid on purchases for which an exemption is claimed against the amount of tax collected and:

5.2.b.1. if the amount collected is greater than the amount of tax paid on exempt purchases, the person shall remit the difference to the Tax Commissioner; or

5.2.b.2. if the amount of tax paid on exempt purchases is greater than the amount collected, the person may seek a refund or credit for the difference as provided by law.

5.2.c. Shall use the same means to collect and remit municipal sales and use tax as the person uses to collect and remit the state consumers sales and service tax and use tax.

5.3. Municipal Sales and Use Tax Return and Payment. -- Any municipal sales and use tax that a person is required to remit to the State Tax Commissioner shall be reported in the same return that the person is required to file under the state consumers sales and service tax and use tax law and the municipal sales and use tax due shall be remitted when the state tax is remitted.

5.4. When no state tax liability. – Any person subject to the municipal sales and use tax that has no liability for the state consumers sales and service and use tax for the reporting period, shall still remit the municipal sales and use tax in a manner consistent with this rule.

§110-28-6. Appeals, Standards and Jurisdiction.

6.1. The Office of Tax Appeals has exclusive and original jurisdiction to hear appeals arising from issues set forth in subsection 6.3 of this rule for which the Tax Commissioner has administration, enforcement and collection responsibility under W. Va. Code §8-1-5a *et seq.*, W. Va. Code §8-13C-1, *et seq.*, and W. Va. Code §11-10-11c.

6.1.a. The Office of Tax Appeals may not hear challenges, disputes or other issues relating to the periodic cost recovery fee or any aspect of the Tax Commissioner's cost recovery authorized by statute and addressed in this rule.

6.1.b. The Office of Tax Appeals may not hear challenges, disputes or other issues relating to the amount of money distributed to any municipality pursuant to W. Va. Code §8-1-5a and W. Va. Code §8-13C-1, *et seq.*, or the provisions of this rule or to the methodology of calculating, determining or allocating any such money.

6.1.c. The Office of Tax Appeals may not hear challenges, disputes or other issues relating to the methodology for calculating or determining the periodic cost recovery fee, the amount of the periodic cost recovery fee, or application of the periodic cost recovery fee as an offset against net tax revenues.

6.2. A municipality or county has no standing before the Office of Tax Appeals in any dispute arising under any municipal sales and use tax or any district excise tax.

6.3. Any review of a municipal sales and use tax or district excise tax by the Office of Tax Appeals is limited to the following:

6.3.a. Appeals from tax assessments issued by the Tax Commissioner pursuant to W.Va. Code §11-10-1 *et seq.* and this rule;

6.3.b. Appeals from decisions or orders of the Tax Commissioner denying refunds or credits for a municipal sales and use tax or district excise tax administered in accordance with this rule;

6.4. A municipality or county may not engage in or participate in any audit performed by the Tax Commissioner for compliance with a municipal sales and use tax or a district excise tax: Provided, That when the municipality imposes a business and occupation tax and employs auditors that audit books and records of businesses for compliance with its business and occupation tax, the Tax Commissioner and the mayor or city manager of that municipality may enter into a memorandum of understanding that allows the municipality to either review the books and records of the business for state and municipal sales and use tax compliance when auditing the books and records for business and occupation tax compliance, or audit the books and records for state and municipal sales and use tax compliance when it audits the books and records of the business for compliance with the business and occupation tax. The businesses reviewed or audited for state and municipal sales and use tax compliance by municipal auditors are limited to those businesses that primarily do business in the municipality and do not have an office or other place of business located outside the municipality. The results of a review or audit must be provided to the Tax Commissioner, who in his or her sole discretion decides whether the Tax Commissioner should take any follow-up action, including, but not limited to, having the State Tax Department make an audit of the books and records of the business, or issuing a deficiency assessment.

6.5. A municipality or county may not hold the Tax Commissioner responsible for any unpaid or unrealized municipal sales and use tax or district excise tax.

§110-28-7. Quarterly distribution of collections; Periodic cost recovery fee; Fund administration.

7.1. The Tax Commissioner shall distribute allocable revenues collected during each calendar quarter to each revenue generating municipality no later than the 15th business day of the month following the close of the quarter in which the tax was remitted to the Tax Department. Timely distribution has occurred when the Tax Department issues the request for transfer to the State Treasurer. The Tax Commissioner has fulfilled the responsibility for distribution of allocable revenues upon issuance of the request for transfer to the State Treasurer.

7.1.a. Each municipality shall record and account for distributions of the taxes administered under this rule on the books and records of the municipality as a single discrete payment. No expenditure, cost or offset shall be recorded or accounted for by the municipality for refunds, reconciliation adjustments, the periodic cost recovery fee, adjustments for filing errors, adjustments for payment errors, and similar adjustments. The municipality effectuates the municipal sales and use tax only pursuant to statutory authorization. Under that statute, the Tax Commissioner is designated as the sole administrator of the taxes collected and distributed under this rule. Therefore, all costs, charges, refunds, offsets, adjustments and fees are considered to be administered at the Tax Department level of the process.

7.2. A fee, to be retained by the Tax Commissioner, is authorized by statute for collecting, enforcing and administering the municipal sales and use tax. That fee is equal to the periodic cost recovery fee calculated under the provisions of this rule. Recoverable cost accrual commences on July 1, 2013. The fee shall be retained by the Tax Commissioner from proceeds of municipal sales and use tax collected for program municipalities. The Tax Commissioner shall deposit all the proceeds from municipal sales and use taxes collected for program municipalities, minus any fee for collecting, enforcing and administering taxes, in the appropriate subaccount for the municipality. However, the periodic cost recovery fee discussed in this rule does not apply to the collection by the Tax Commissioner of the District Excise Tax provided for in W.Va. Code §7-22-1 *et seq.* and W.Va. Code §8-38-1 *et seq.* because the fee for collection of the District Excise tax is provided for in W. Va. Code §11-10-11b rather than in W.Va. Code §11-10-11c.

7.3. The Treasurer shall deposit the following items in the "Local Sales Tax and Excise Tax Administration Fund" created by W.Va. Code §11-10-11c:

7.3.a. The periodic cost recovery fee, calculated pursuant to this rule;

7.3.b. Any amounts received on and after July 1, 2013, from fees retained by the Tax Commissioner pursuant to the authorization provided in W.Va. Code §8-13C-6;

7.3.c. Amounts deducted and retained by the Tax Commissioner under W.Va. Code §11-10-11b;

7.3.d. Any future amounts appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law;

7.3.e. All moneys in the Tax Department "Municipal Sales and Use Tax Operations Fund" established under W.Va. Code §8-13C-6 that were transferred to the "Local Sales Tax and Excise Tax Administration Fund"

on July 1, 2013 as provided in W.Va. Code §11-10-11c;

7.3.f. All moneys in the "Special District Excise Tax Administration Fund" established under W.Va. Code §11-10-11b that were transferred to the "Local Sales Tax and Excise Tax Administration Fund" on July 1, 2013 as provided in W.Va. Code §11-10-11c; and

7.3.g. Any accrued interest or other return on the moneys in the fund.

7.4. Any amounts in the "Local Sales Tax and Excise Tax Administration Fund" may be expended by the Tax Commissioner for the general administration, collection and enforcement of all municipal sales and use taxes and district excise taxes. However, the expenditure is limited to the amount appropriated by the Legislature for any fiscal year. The expenditures may include, but are not be limited to, general administration expenses, such as:

7.4.a. Operating costs; and

7.4.b. Implementation costs.

§110-28-8. Notification; Effective Date of tax

8.1. A municipality that imposes a municipal sales and use tax, and any municipality that changes the rate of the tax shall notify the Tax Commissioner at least 180 days before the date the municipal sales and use tax takes effect or the change in the rate of tax takes effect. However, the effective date for payment and collection of the tax shall begin either on the July 1 next succeeding the 180 days' notice to the Tax Commissioner of the imposition of the taxes or the change in the rate of the taxes, or on the January 1 next succeeding the 180 days' notice to the Tax Commissioner of the imposition of the taxes or the change in the rate of the taxes.

8.1.a. For example, if the information required by subsection 8.2. of this section is provided to the Tax Commissioner at the end of December of 2017, the sales and use tax adopted by the municipality will be collected by the Tax Commissioner beginning July 1, 2018.

8.1.b. For example, if the information required by subsection 8.2 of this section is provided to the Tax Commissioner at the end of May of 2018, the sales and use tax adopted by the municipality will be collected by the Tax Commissioner beginning January 1, 2019.

8.2. The notification shall include: (a) a certified copy of the ordinance imposing the taxes, or changing the rate in a tax; (b) a description of the boundaries of the municipality; (c) a database in an Excel spreadsheet showing the nine-digit zip codes for addresses located within the boundaries of the City or Municipality and the tax rate applicable to each 9-digit zip code; and (d) any other information the Tax Commissioner may need to administer, collect and enforce the taxes administered under this rule. Failure to comply with the requirements of this section will result in a delay in the collection of the municipal sales and use tax until after there is compliance with this 180-day rule.

8.3. Rates and boundaries database. -- The rates and boundaries database required by subsection 8.2 of this rule shall be prepared by the municipality in accordance with guidance provided by the Streamlined Sales Tax Governing Board, Inc. for preparation of a rates and boundary database.

8.4. Changes in municipal boundaries. -- Any municipality that imposes a municipal sales and use tax that changes or alters its boundaries, shall provide a certified copy of the ordinance adding to, or detaching from, the territory of the municipality to the Tax Commissioner. The notice must include the effective date of the change. The notice to the Tax Commissioner must include: (a) a map of the city or municipality clearly showing the territory added or detached; (b) a list showing the names and physical addresses of businesses located in the annexed or detached area; and (c) the information specified in subsection 8.2. of this rule. When a city or municipality is currently imposing a municipal sales and use tax that is being collected by the Tax Commissioner, the municipal sales and use tax will not apply to catalogue, Internet or telemarketing sales to persons residing in the annexed area until the January 1st or the July 1st date following the 180 days' notice to the Tax Commissioner of the change in the municipal boundary. However, businesses doing business in the annexed area must begin collecting municipal sales and use taxes on transactions sourced to the annexed area as of the day the annexation takes effect. Similarly, businesses doing business in the detached area of the municipality must stop collecting municipal sales and use taxes on transactions sourced to the detached area as of the day the detachment takes effect.

Note: Under W. Va. Const. Art. X, §9, municipal taxes must be uniform. It would be unconstitutional to allow businesses in territory newly annexed to a municipality that imposes a municipal sales and use tax to avoid having to collect the tax until the July 1st or January 1st after the 180-days' notice required by subsection 8.1 of this section has been given. Similarly, if a municipality that imposes a sales and use tax later de-annexes some of its territory, businesses in the de-annexed area have no authority after the de-annexation takes effect to collect that municipality's sales and use tax.

8.5. Designated agent. -- When providing the notification required by this section, the municipality and county must provide the Tax Commissioner with the name, mailing address, telephone number and email address of a designated agent to send and receive all information relating to the administration, enforcement, collection and distribution of the municipality's municipal sales and use tax or county's or municipality's district excise tax. The municipality or county shall promptly inform the Tax Commissioner of any change in the name of the designated agent or the agent's contact information.

APPENDICES

Appendix A to this rule consists of a model ordinance imposing a municipal sales and use tax for use by home rule municipalities.

Appendix B to this rule consists of a model ordinance imposing an alternative municipal sales and use tax for use by municipalities that do not impose municipal business and occupation tax.

APPENDIX A

MODEL MUNICIPAL ORDINANCE

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

ARTICLE ___. MUNICIPAL SALES AND USE TAXES.

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

(a) The Municipal Home Rule Board on [Insert Date], approved the home rule plan submitted by the [City or Municipality] of [County], West Virginia, thereby allowing the [City or Municipality] to adopt a municipal sales and 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 or Governing Body] hereby finds and declares that the adoption by this [City or 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 [City's or Municipality'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 or Municipality's] sales and use taxes.

(b) The [City Council or Governing Body] 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 [City name], 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) "Municipal sales and use tax" means the taxes imposed by sections [3] and [4] of this article.

(5) "Municipality" or "this Municipality" means the Municipality of [Municipality name], West Virginia.

(6) "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.

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

(8) "Purchase price" means the measure subject to the taxes imposed by this article and has the same meaning as sales price.

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

(10) "Sale," "sales" or "selling" have the meaning ascribed to those terms in W. Va. Code §11-15B-1 *et seq.*

(11) "Sales and use taxes" means the taxes imposed by sections [3] and [4] of this article.

(12) "Sales price" has the meaning ascribed to that term in W. Va. Code §11-15B-1 *et seq.*

(13) "Sales tax" means the tax levied by section [3] of this article.

(14) "Service" or "selected service" have the meaning ascribed to those terms in W. Va. Code §11-15B-1 *et seq.*

(15) "State sales tax" means the tax levied by W. Va. Code §11-15-1 *et seq.*

(16) "State use tax" means the tax levied by W. Va. Code §11-15A-1 *et seq.*

(17) "Tax" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under W. Va. Code §11-10-1 *et seq.*

(18) "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.

(19) "This state" means the State of West Virginia.

(20) "Ultimate consumer" or "consumer" means a person who uses or consumes services, tangible personal property or custom software.

(21) "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 or Municipality] for use thereafter solely outside this [City or Municipality].

(22) "Use tax" means the tax imposed by section [4] of this article.

(23) "Vendor" means any person engaged in this [City or 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 or 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 that state consumers sales and service tax is collected under W. Va. Code §11-15-1 *et seq.* and remitted to the tax commissioner. The rate of tax shall be [may not exceed one percent] of the sales price, as defined in section [2] 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 or 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 or Municipality] in the same manner that state use tax is collected under W. Va. Code §11-15A-1 *et seq.* and W. Va. Code §11-15B-1 *et seq.* 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 [2] of this article, of the tangible personal property, custom software or taxable service used within the [City or 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 basis, on a per item basis, or on an invoice basis: Provided, That the method used must be consistently used during the reporting period and 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 provided in 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 W. Va. Code §11-14C-1 *et seq.*

(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 [City or 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 W. Va. Code §11-15-1 *et seq.*

(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 or 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 [City or 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 W. Va. Code §11-15-1 *et seq.*; the state use tax imposed by W. Va. Code §11-15A-1 *et seq.*; the public utility tax imposed by this [City or Municipality] pursuant to W. Va. Code §8-13-5a; the amusement tax imposed by this [City or Municipality] pursuant to W. Va. Code §8-13-6; the tax on sales of alcoholic liquors and wine imposed by this [City or Municipality] pursuant to W. Va. Code §8-13-7; the hotel

occupancy tax imposed by this [City or Municipality] pursuant to W. Va. Code §7-18-1 *et seq.*; 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 of 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 or Municipality] to the proper rate of tax. If any nine-digit zip code area includes area outside this [City or 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 or 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 or 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 provide the tax commissioner with any other information the tax commissioner may require to maintain the database. An ordinance annexing property into the [City or Municipality], or an ordinance removing property from the corporate limits of the [City or Municipality] may not take effect any sooner than the first day of a calendar quarter that begins 60 days after the [City or Municipality] provides written notice to the tax commissioner of a change in the [City or Municipal] boundaries.

(c) The nine-digit database shall be maintained by the [City or 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 or 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. The [City or Municipality] may enter into a written agreement with the tax commissioner that will allow employees of the [City or Municipality] auditing a vendor whose primary business location is in the [City or Municipality] for compliance with the [City's or Municipality'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 or Municipality] and obligate the [City or Municipality] 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 or 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 or Municipality] will be remitted at least quarterly by the State Treasurer to the [City or 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 W. Va. Code §11-10-1 *et seq.* applies to the administration, collection and enforcement of the municipal sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in W. Va. Code §8-13C-1 *et seq.*, 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 W. Va. Code

§11-9-1 *et seq.* applies to the administration, collection and enforcement of the municipal sales and use taxes imposed by 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 or Municipality].

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

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

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

Alternative § 15. Deposit of Taxes Collect in Special Revenue Fund.

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

(1) All revenues received by the [City or Municipality] from collection of the municipal sales and use taxes, including any interest, additions to tax and penalties deposited with the [City or Municipality] [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 or Municipality] into the Municipal Sales and Use Tax Fund.

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

(c) Revenues in the Municipal Sales and Use Tax Fund shall be used for the following purposes:

(1) First, to satisfy the debt service requirements each fiscal year on any bonds issued by, or other obligations incurred by, the [City or 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 USED, 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 Municipal Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the [City's or Municipality's] General Revenue Fund or Account.

§ 16. Issuance of Revenue Bonds.

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

The [City or Municipality] shall have the power and authority to issue its revenue bonds, refunding revenue bonds, or other obligations, as appropriate, under W. Va. Code §8-16-1 *et seq.* (the "Bond Act") or other appropriate provisions of the West Virginia Code as may be applicable from time to time for the purposes of financing or refinancing costs of infrastructure improvements or economic development activities and projects within the [City or Municipality]. The [City or 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 or 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 or Municipality] from time to time, including any refunding bonds to finance or refinance infrastructure improvements or economic development activities and projects within the [City or 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 or Municipality]. The [City or Municipality] may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other obligations. 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, W. Va. Code §8-16-1 *et seq.*

§ 17. Severability and Savings Clause.

If any provision of this article or the application thereof to any person or circumstance 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 or 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.

§ 18. Effective Date.

(a) This article shall become effective [upon its adoption by the City Council of this City or Governing Body of this Municipality] on [Insert Date of Adoption] [or as provided in the charter of the City or Municipality on [Insert Effective Date]]. However, the [City Council or 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.*]

§ 19 Notification of Tax Commissioner.

Upon adoption of this ordinance by the [City Council or Governing Body], the [City or Municipal] [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, a map showing the boundaries of the [City or Municipality] along with a description of the boundaries of the [City or 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, the West Virginia State Tax Department suggests that the City/Municipality consult with bond counsel prior to adopting its sales and use tax ordinance.

APPENDIX B

MODEL MUNICIPAL ORDINANCE

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

ARTICLE ___. MUNICIPAL SALES AND USE TAXES.

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

(a) The [City Council or Governing Body] of the [City or Municipality] of [County], West Virginia, hereby finds and declares that the adoption by this [City or Municipality], for its municipal sales and 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 or Municipality'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 or Municipality's] sales and use taxes.

(b) The [City Council or Governing Body] 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 [City name], 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) "Municipal sales and use tax" means the sales tax imposed in section [3] of this article and the use tax imposed in section [4] of this article.

(5) "Municipality" or "this Municipality" means [Municipality], West Virginia.

(6) "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.

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

(8) "Purchase price" means the measure subject to the taxes imposed by this article and has the same

meaning as sales price.

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

(10) "Sale," "sales" or "selling" have the meaning ascribed to those terms in W. Va. Code §11-15B-1 *et seq.*

(11) "Sales and use taxes" means the taxes imposed by sections [3] and [4] of this article.

(12) "Sales price" has the meaning ascribed to that term in W. Va. Code §11-15B-1 *et seq.*

(13) "Sales tax" means the tax levied by section [3] of this article.

(14) "Service" or "selected service" have the meaning ascribed to those terms in W. Va. Code §11-15B-1 *et seq.*

(15) "State sales tax" means the tax levied by W. Va. Code §11-15-1 *et seq.*

(16) "State use tax" means the tax levied by W. Va. Code §11-15A-1 *et seq.*

(17) "Tax" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under W. Va. Code §11-10-1 *et seq.*

(18) "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.

(19) "This state" means the State of West Virginia.

(20) "Ultimate consumer" or "consumer" means a person who uses or consumes services, tangible personal property or custom software.

(21) "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 or Municipality] for use thereafter solely outside this [City or Municipality].

(22) "Use tax" means the tax imposed by section [4] of this article.

(23) "Vendor" means any person engaged in this [City or 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 or 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 that state consumers sales and service tax is collected under W. Va. Code §11-15-1 *et seq.*, and remitted to the tax commissioner. The rate of tax shall be [may not exceed one percent] of the sales price, as defined in section [2] 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 or 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 or Municipality], in the same manner that state use tax is collected under W. Va. Code §11-15B-1 *et seq.* and remitted to the tax commissioner. The rate of tax shall be one percent of

the purchase price, as defined in section [2] of this article, of the tangible personal property, custom software or taxable service used within the [City or 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 basis, on a per item basis or on an invoice basis: Provided, That the method used must be consistently used during the reporting period and 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 provided in 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 W. Va. Code §11-14C-1 *et seq.*

(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 [City or 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 W. Va. Code §11-15-1- *et seq.*

(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 or 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 [city or 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 W. Va. Code §11-15-1 *et seq.*; the state use tax imposed by W. Va. Code §11-15A-1 *et seq.*; the public utility tax imposed by this [City or Municipality] pursuant to W. Va. Code §8-13-5a; the amusement tax imposed by this [City or Municipality] pursuant to W. Va. Code §8-13-6; the tax on sales of alcoholic liquors and wine imposed by this [City or Municipality] pursuant to W. Va. Code §8-13-7; the hotel occupancy tax imposed by this [City or Municipality] pursuant to W. Va. Code §7-18-1 *et seq.*; 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 of 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 or Municipality] to the proper rate of tax. If any nine-digit zip code area includes area outside this [City or 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 or 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 or 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 provide the tax commissioner with any other information the tax commissioner may require to maintain the database. An ordinance annexing property into the [City or Municipality], or an ordinance removing property from the corporate limits of the [City or Municipality] may not take effect any sooner than the first day of a calendar quarter that begins 60 days after the [City or Municipality] provides written notice to the tax commissioner of a change in the boundaries of the [City or Municipality].

(c) The nine-digit database shall be maintained by the [City or 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 or 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 or 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 or Municipality] will be remitted at least quarterly by the State Treasurer to the [City or Municipal] [Treasurer], as provided in 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 W. Va. Code §11-10-1 *et seq.* applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in W. Va. Code §8-13C-1 *et seq.*, 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 W. Va. Code §11-9-1 *et seq.* 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 or Municipality].

§ 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 article, to the

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

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

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

Alternative § 15. Deposit of Taxes Collect in Special Revenue Fund.

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

(1) All revenues received from collection of the [City's or Municipality's] sales and use taxes, including any interest, additions to tax and penalties deposited with the [City or Municipality] [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 or Municipality] into the Municipal Sales and Use Tax Fund.

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

(c) Revenues in the Municipal Sales and Use Tax Fund shall be used for the following purposes:

(1) First, to satisfy the debt service requirements each fiscal year on any bonds issued by, or other obligations incurred by, the [City or 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 USED, 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 Municipal Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the [City's or Municipality's] General Revenue Fund or Account.

§ 16. Issuance of Revenue Bonds.

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

The [City or Municipality] shall have the power and authority to issue its revenue bonds, refunding revenue bonds, or other obligations, as appropriate, under W. Va. Code §8-16-1 *et seq.* (the "Bond Act") or other appropriate provisions of the West Virginia Code as may be applicable from time to time for the purposes of financing or refinancing costs of infrastructure improvements or economic development activities and projects within the [City or Municipality]. The [City or 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 or 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 or Municipality] from time to time, including any refunding bonds to finance or refinance infrastructure improvements or economic development activities and projects within the [City or 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 or Municipality]. The [City or Municipality] may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other obligations. 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 W. Va. Code §8-16-1 *et seq.*

§ 17. Severability and Savings Clause.

If any provision of this article or the application thereof to any person or circumstance 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 or 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.

§ 18. Effective Date.

(a) This article shall become effective [upon its adoption by the City Council of this City or Governing Body of this Municipality] on [Insert Date of Adoption] [or as provided in the charter of the City or Municipality on [Insert Effective Date]]. However, the [City Council or 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.*]

§ 19. Notification of Tax Commissioner.

Upon adoption of this ordinance by the [City Council or Governing Body], the [City or 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 or Municipality] along with a description of the boundaries of the [City or 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, the West Virginia State Tax Department recommends that the City/Municipality consult with bond counsel prior to adopting its sales and use tax ordinance.