

TOWN OF NUTTER FORT

Ordinance 2021-01

AN AMENDED ORDINANCE OF THE COUNCIL OF THE TOWN OF NUTTER FORT ENACTING, PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE § 8-1-5A MUNICIPAL HOME RULE, AND THE TOWN OF NUTTER FORT'S APPROVED HOME RULE PLAN DATED JANUARY 15, 2020, TO PROVIDE FOR THE IMPOSITION OF A CONSUMER SALES AND SERVICE TAX AND A USE TAX.

WHEREAS, in 2013, the West Virginia Legislature expanded the Municipal Home Rule Pilot Program created pursuant to the provisions of West Virginia Code §8-1-5a, “the Home Rule Statute” to allow participation by additional municipalities; and

WHEREAS, the Town of Nutter Fort submitted its Home Rule Plan, “the Town’s Home Rule Plan” to the Home Rule Board, which plan was approved by the Board on January 15, 2020, authorizing the Town to impose a consumer sales and service tax and a use tax pursuant to the provisions of West Virginia Code §8-1-5a; and

WHEREAS, the Town adopted an Ordinance on December 8, 2020, imposing a municipal sales and service tax to become effective on July 1, 2021; and

WHEREAS, the Town submitted the Ordinance to the West Virginia State Tax Department for review; and

WHEREAS, the Legal Division of the Department reviewed the Ordinance and requested that the Town change the effective date of the Ordinance to January 1, 2022, and correct four typographical errors in the Ordinance; and

WHEREAS, the purpose of this Amended Ordinance is to correct the errors in the prior Ordinance as requested by the West Virginia State Tax Department.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF NUTTER FORT THAT:

Pursuant to the power and authority granted the Town of Nutter Fort by the provisions of West Virginia Code §8-1-5a, and the Town of Nutter Fort’s Home Rule Plan, which plan was approved by the Home Rule Board on January 15, 2020, Part Two of the Nutter Fort Code be and is hereby amended and supplemented to provide for the imposition, administration, collection, and enforcement of a consumer sales and service tax and a complimentary use tax to be codified as Section 203, Consumer Sales and Use Tax of said Chapter Two, and the same is hereby enacted as follows:

Section 203.01 Town Council Findings.

- (a) The Municipal Home Rule Board on January 15, 2020, approved the home rule plan submitted by the Town of Nutter Fort, West Virginia, thereby allowing the Town to

reduce the business and occupation tax on certain tax classifications and enact a 1% consumers sales and service tax and a use tax pursuant to W.Va. Code§ 8-1-5a without the limiting restrictions in W.Va. Code§ 8-13C-1 et seq. The Town will provide for a 5% reduction in B&O Tax through a reduction on rental B&O taxes to a rate of 0.0 percent. In accordance with its home rule plan, the Town Council hereby finds and declares that the adoption by this Town for its consumer sales and service tax and its 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 Town's sales and use taxes, (2) simplify preparation of municipal sales and use tax returns by taxpayers, and (3) improve enforcement of the Town's sales and use taxes.

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

Section 203.02 Definitions.

- (a) Terms used in this Ordinance or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this Ordinance 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 Ordinance:
 - (1) "Business" includes all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions, which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.
 - (2) "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.
 - (3) "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.
 - (4) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
 - (5) "Purchase price" means the measure subject to the taxes imposed by this Ordinance and has the same meaning as sales price;
 - (6) "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this Ordinance.
 - (7) "Sale," "sales" or "selling" have the meaning ascribed to those terms in Article fifteen-b, chapter eleven of the Code of West Virginia.
 - (8) "Sales and use taxes" means the taxes imposed by Section 203.03 and Section 203.04 of this Ordinance.

- (9) "Sales price" has the meaning ascribed to that term in article fifteen-b, chapter eleven of the Code of West Virginia.
- (10) "Sales tax" means the tax levied by Section 203.03 of this Ordinance.
- (11) "Service" or "selected service" have the meaning ascribed to those terms in Article fifteen-b, chapter eleven of the Code of West Virginia.
- (12) "State sales tax" means the tax levied by article fifteen, chapter eleven of the Code of West Virginia, as amended.
- (13) "State use tax" means the tax levied by article fifteen-a, chapter eleven of the Code of West Virginia, as amended.
- (14) "Tax" means the taxes imposed by this Ordinance and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.
- (15) "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.
- (16) "This state" means the State of West Virginia.
- (17) "Town" or "this Town" means the Town of Nutter Fort, 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 203.04 of this Ordinance means and includes:
- a. The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or
 - b. The use or enjoyment in this state of the result of a taxable service. As used in this definition, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property. The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the Town for use thereafter solely outside this Town.
- (20) "Use tax" means the tax imposed by Section 203.04 of this Ordinance.
- (21) "Vendor" means any person engaged in this Town in furnishing services taxed by this Ordinance or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this Ordinance.

Section 203.03 Imposition of Consumer Sales and Service Tax.

For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services, a vendor doing business in this Town 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, article fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, of the tangible personal property, custom software or taxable service purchased or leased.

Section 203.04 Imposition of Use Tax.

An excise tax is hereby levied and imposed on the use in this Town of tangible personal property, custom software and the results of taxable services, to be collected and paid to the tax commissioner as agent for the Town 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 Ordinance, of the tangible personal property, custom software or taxable service used within the Town.

Section 203.05 Calculation of Tax on Fractional Parts of Dollar.

The tax computation under Section 203.03 and Section 203.04 of this Ordinance shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than 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.

Section 203.06 State and Local Tax Bases.

The taxable base of the taxes imposed by Section 203.03 and Section 203.04 of this Ordinance shall be identical to the sales and use tax base of this State except as provided in section Section 203.07 of this Ordinance, unless otherwise prohibited by federal law, as required by W. Va. Code §11-15B-34.

Section 203.07 Exceptions.

The taxes imposed by this Ordinance 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, upon which the tax imposed by that article is collected.
- (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 Town is prohibited from taxing under the laws of this state or of the United States.
 - (4) The sales tax imposed by Section 203.03 of this Ordinance 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 203.04 of this Ordinance does not apply to any purchase upon which the sales tax imposed by Section 203.03 has been paid.

Section 203.08 Credit Against Municipal Use Tax.

- (a) A person is entitled to a credit against the use tax imposed by Section 203.04 of this Ordinance on the use of a particular item of tangible personal property, custom software or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software or service: *Provided*, that the amount of credit allowed may not exceed the amount of use tax imposed by Section 203.04 of this Ordinance on the use of the tangible personal property, custom software or results of the taxable service in this Town.
- (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.

Section 203.09 Tax cumulative.

The taxes imposed by this Ordinance are in addition to other taxes imposed on the sale or use of tangible personal property, custom software or taxable services including, but not limited to, the State consumers sales and service tax imposed by article 15, chapter 11 of the W. Va. Code; the State use tax imposed by article 15A, chapter 11 of the W. Va. Code; the public utility tax imposed by this Town pursuant to section 5a, article 8 of the W. Va. Code; the amusement tax imposed by this Town 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 Town pursuant to section 7, article 13, chapter 8 of the W. Va. Code; the hotel occupancy tax imposed by this Town 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.*

Section 203.10 Local Rate and Boundary Data Base; Changes.

- (a) The tax commissioner is required by W. Va. Code § 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this State. The Town shall furnish the tax commissioner with information the tax commissioner requires for that database that will allow the tax commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the Town to the proper rate of tax. If any nine-digit zip code area includes area outside this Town, the single state and local rate assigned to that area in the tax commissioner's database will be the lowest rate applicable to that area: *Provided*, that, when sales occur at and are sourced to a physical location of the seller located in the Town in that nine-digit zip code area, the seller shall collect the tax imposed by Section 203.03 of this Ordinance.
- (b) Whenever boundaries of the Town change, whether by annexation or de-annexation, the Town recorder or their designee shall promptly notify the tax commissioner in writing of the change in boundaries; provide the tax commissioner with the nine-digit zip code or codes for the area annexed or de-annexed; and any other information the tax commissioner may require to maintain the database. An ordinance annexing property into the Town, or an ordinance removing property from the corporate limits of the Town may not take effect any sooner than the first day of a calendar quarter that begins 60 day after the Town provides written notice to the tax commission of a change in the municipal boundaries.
- (c) The nine-digit database shall be maintained by the Town until such time as the tax commissioner allows use of a different system to determine whether a location is within or outside the corporate limits of the Town.

Section 203.11 State level administration.

- (a) The tax commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this Ordinance as provided in W. Va. Code § 8-13C-6 and § 11-15B-33. The Town may enter into a written agreement with the tax commissioner that will allow employees of the Town auditing a vendor whose primary business location is in the Town for compliance with the Town'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 Town and obligate the Town to share that information with the tax commissioner.
- (b) The tax commissioner may retain from collections of the taxes imposed by this Ordinance the fee allowed by W. Va. Code § 11-10-11c or by any other state law or legislative rule.
- (c) The tax commissioner shall deposit all the proceeds from collection of the taxes imposed by this Ordinance, minus any fee for collecting, enforcing and administering taxes retained under this section, in the subaccount for the Town established in "municipal sales and services tax and use tax fund," an interest

bearing account created in the State treasury pursuant to W. Va. Code § 8-13C-7.

All moneys collected and deposited in the subaccount for the Town shall be remitted at least quarterly by the State Treasurer to the Town, as provided W. Va. Code § 8-13C-7.

Section 203.12 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 Ordinance, 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 Ordinance and were set forth in this Ordinance, as provided in W. Va. Code § 8-13C-6.

Section 203.13 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 Ordinance with like effect as if that act were applicable only to the taxes imposed pursuant to this Ordinance and were set forth in this Ordinance, as provided in W. Va. Code § 8-13C-6: *Provided*, that the criminal penalties imposed upon conviction for a criminal violation of this Ordinance may not exceed the maximum penalties allowed by law for a similar violation of the ordinances of this Town.

Section 203.14 Automatic Updating.

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

Section 203.15 Deposit of Taxes Collected and Received in a Special Revenue Fund.

- (a) There is hereby established a special revenue fund in the Town Treasury which shall be designated and known as the Town Sales and Use Tax Fund. The Town Sales and Use Tax Fund shall consist of:
 - (1) All revenues received from collection of the Town's sales and use taxes, including any interest, additions to tax and penalties deposited with the Town;
 - (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 Town into

the Town Sales and Use Tax Fund.

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

- (b) Revenues in the Town Sales and Use Tax Fund shall be allocated by Town Council in accordance with the following priorities:
 - (1) First, 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 Town, from time to time, including any refunding bonds, to finance or refinance infrastructure improvements or economic development projects or programs within the Town, 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 projects and programs within the Town;
 - (2) Second, for capital expenditures including but not limited to infrastructure improvements with the Town;
 - (3) Third, to provide funding to assist with economic development projects and programs or providing the opportunity for tax incentives to help grow the Town's tax base and create jobs; and
 - (4) Fourth, any unencumbered revenue in the Town Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the Town's General Revenue Account.

Section 203.16 Severability and Savings Clause.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This Town Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

Section 203.17 Effective Date.

This Ordinance shall be forwarded to the West Virginia State Tax Department immediately upon adoption and the consumer sales and use tax shall be effective upon the date noticed by the West Virginia State Tax Department. In no case, however, shall the imposition of sales and use tax be collected earlier than January 1, 2022.

Section 203.18 Notification of Tax Commissioner.

Upon adoption of this ordinance by Town Council, the Town Recorder or their designee shall forthwith send to the tax commissioner a certified copy of this ordinance, the rate and the boundary database required by Section 203.10 of this Ordinance, along with a description of the boundaries of the Town, and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this Ordinance.

This Ordinance shall be effective upon passage. Passed by Council of the Town of Nutter Fort on FIRST READING on this _____ day of _____, 2021.

Passed by Council of the Town of Nutter Fort on SECOND READING on this _____ day of _____, 2021.

MAYOR

ATTEST:

TOWN RECORDER