



City of Charles Town

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 725-2311 ♦ Fax: (304) 725-1014 ♦ Web: www.charlestownwv.us

AN AMENDMENT TO THE CODIFIED ORDINANCES OF THE CITY OF CHARLES TOWN, WEST VIRGINIA PROVIDING FOR THE REDUCTION OF BUSINESS & OCCUPATION TAX AND IMPOSING CONSUMER SALES TAX WITH REGARD TO PART SEVEN, "BUSINESS REGULATIONS AND TAXATION", CHAPTER THREE, "TAXES AND SERVICE CHARGES", ARTICLE 745.11," B&O TAX" AND CHAPTER TWO, "HOME RULE CODE", ARTICLE 203 "CONSUMER SALES TAX".

MAYOR

Peggy A. Smith

CITY
COUNCIL

*Rich
Bringewatt*

*Wayne
Clark*

*Cbet
Hines (a)*

*Sandra
Stuber
McDonald*

*Ann
Paonessa*

*Mark
Reinbart*

*Michael
Slower*

*Jonathan
Wertman*

The City of Charles Town does ordain as follows:

Section 1. Amend Part 7, Chapter 3, Article 745.11 B&O Tax – Selling Tangible Property as follows:

745.07 SELLING TANGIBLE PROPERTY.

Upon every person engaging or continuing within the municipality in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectioneries and other public eating houses and wholesale sales from a rolling stockpile, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds, or other evidence of indebtedness, there is hereby levied, and shall be collected, a tax equal to ~~eleven~~ five one-hundredths percent (~~0.11%~~) (0.05%) of the gross income of the business; except, therein the case of selling at wholesale, the tax shall be equal to five one-hundredths percent (0.05%) of the gross income of the business.

Section 2: Adopt Chapter 2, Article 203, as follows:

203.01 Council Findings.

The Municipal Home Rule Board on December 1, 2014, approved the City's proposed Ordinance submitted originally under the City's approved Home Rule Application approved on October 6, 2014, to reduce business & 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. In accordance with Charles Town's approved Home Rule Plan Application; the City Council hereby finds and declares that the adoption by this City for its consumers sales and service tax 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:

- (a) Simplify collection of the taxes,
- (b) Simplify preparation of consumers sales and use tax returns by taxpayers,
- (c) Begin and engage a concerted effort and attempt to further reduce B&O taxes by future general ordinance amendment(s), unrelated to reductions specifically required to impose sales tax pursuant to W. Va. Code § 8-1-5A requiring the reduction or elimination of a

CITY
MANAGER

*David
Mills*

CITY CLERK

*Kiya
Tabb*

- category or categories of B&O taxes for the purposes of encouraging increased economic competitiveness and generating increased employment opportunities.
- (d) Assist with generating additional revenue to alleviate the financial consequences of falling gaming revenues
 - (e) Improve enforcement of the City's sales and use taxes.

203.02 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. In the event of any conflict between the definitions set forth herein and those definitions set forth in articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, the definitions set forth in articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended shall supersede those set forth herein.
- (b) As used in this section:
 1. "Business" means any activity engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.
 2. "City" or "this City" means the City of Charles Town, West Virginia.
 3. "Code of West Virginia" means the Code of West Virginia, 1931, as amended.
 4. "Person" includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number.
 5. "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
 6. "Purchase price" means the measure subject to the taxes imposed by this article and has the same meaning as sales price;
 7. "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this article.
 8. "Sale," "sales" or "selling" have the meaning ascribed to those terms in W. Va. Code § 11-15-2(b)(17).
 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 municipal sales and service tax levied under Section 6-102 of this article.
 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.
 13. "State use tax" means the tax levied by article fifteen-a, chapter eleven of the Code of West Virginia.

14. "Tax" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.
15. "Tax Commissioner" means the State Tax Commissioner, or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this articles fifteen or fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, or the rules promulgated under those articles.
16. "Ultimate consumer" or "consumer" means a person who uses or consumes services or tangible personal property or custom software.
17. "Use" for purposes of the tax imposed by Article 203.04 of this chapter means and includes:
 - i. 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
 - ii. 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.
 - iii. The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the City for use thereafter solely outside this City.
18. "Use tax" means the municipal tax imposed by Section 6-103 of this article.
19. "Vendor" means any person 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.

203.03 Imposition of Consumer Sales and Service Tax.

For the privilege of selling tangible personal property or customer software and for the privilege of furnishing certain selected services, defined by this article, the vendor shall collect from the purchaser the taxes imposed by this section and shall 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 under articles fifteen and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, and in accordance with procedures and processes prescribed by 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.

203.04 Imposition of Use Tax.

An excise tax is hereby levied and imposed on the use in this City of tangible personal property, custom software or taxable services, to be collected and paid to the Tax Commissioner 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. The rate of tax shall be one percent of the purchase price, as defined in article fifteen-b, chapter eleven of the Code of West Virginia, of the tangible personal property, custom software or taxable service used within the City.

203.05 Calculation of Tax on Fractional Parts of a Dollar.

The tax computation under Section 203.03 and Section 203.04 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 sale or use tax.

203.06 State and Local Sales and Use Tax Bases

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

203.07 Exceptions.

The taxes imposed by this article do not apply to:

- (a) The sale or use of motor fuel, as defined in article fourteen-c, chapter eleven of the Code of West Virginia, 1931, as amended.
- (b) The sale or use of motor vehicles subject to the tax imposed by section three-c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended.
- (c) The purchase or use of any tangible personal property, custom software or service that the City is prohibited from taxing under the laws of this State.
- (d) The tax imposed by Article 203.03 does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia, except for the exemption provided in section nine-f, article fifteen, chapter eleven of the Code of West Virginia
- (e) The tax imposed by Article 203.04 does not apply to any purchase upon which the tax imposed by Article 203.03 has been paid, nor to any transaction that is exempt from the tax imposed by article fifteen-a, chapter eleven of the Code of West Virginia, except for the exemption provided in section nine-f, article fifteen, chapter eleven of the Code of West Virginia

203.08 Credit for Local Sales Tax Lawfully Paid to Another Municipality.

- (a) A person is entitled to a credit against the use tax imposed by Section 6-103 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 6-103 on the use of the tangible personal property, custom software or results of the taxable service in this City.
- (b) For purposes of this section

1. "Sales tax" includes a sales tax or compensating use tax imposed on the sale or use of tangible personal property, custom software or the results of a taxable service by the municipality in which the sale occurred; and
 2. "Municipality" means a municipality as defined in section two, article one, chapter eight, or a comparable unity of local government in another State.
- (c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or any other state. For purposes of this paragraph, "state" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

203.09 Local Rate and Boundary 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 City shall furnish the Tax Commissioner with information the Tax Commissioner requires for that database that will allow the Tax Commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the city to the proper rate of tax. If any nine-digit zip code area includes area outside this City, the single state and local rate assigned to that area in the Tax Commissioner's database will be the lowest rate applicable to that area: Provided, That, when sales occur at and are sourced to a physical location of the seller located in the City in that nine digit zip code area, the seller shall collect the tax imposed by Section 6-102 of this article.
- (b) Whenever boundaries of the City change, whether by annexation or de-annexation, the City Collector shall promptly provide the Tax Commissioner with a certified copy of the ordinance adding or detaching territory from the municipality. The ordinance must reflect the effective date of the change; provided, that any municipal sales and service tax or use tax will be effective in annexed areas until July 1st following 180 days' notice to the Tax Commissioner of the change in boundary. Additionally, the following must be provided to the Tax Commissioner: a map of the city clearly showing the annexed area or de-annexed, the nine-digit zip code or codes for the area annexed or de-annexed any other information the Tax Commissioner may require to maintain the database.

203.10 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 § 8-1-5a, §11-10-11c and § 11-15B-33. The City may enter into an agreement with the Tax Commissioner that will allow employees of the City auditing a vendor with a physical location in the City for compliance with the City's business and occupation tax to also audit that location for compliance with the sales and use tax laws of this State and this City and 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 sub-account for this city established in Municipal Sales and Service 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 sub-account for the city shall be remitted at least quarterly by the State Treasurer to the City Treasurer, as provided W. Va. Code § 8-13C-7.

203.11 Administrative Procedures.

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

203.12 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 sales and service tax and use tax imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article. 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 that violation.

203.13 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 a sales or use tax imposed pursuant to this article, to the extent applicable.

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

- (a) There is hereby established a special revenue fund in the City Treasury which shall be designated and known as the City Sales and Use Tax Fund. The City Sales and Use Tax Fund shall consist of:
1. All revenues received from collection of the City's sales and use taxes, including any interest, additions to tax and penalties deposited with the City Treasurer;
 2. All appropriations to the fund;
 3. All interest earned from investment of the fund; and
 4. Any gifts, grants or contributions received and placed by the City into the City Sales and Use Tax Account.

Revenues in the City Sales and Use Tax Fund shall not be treated by any person to be a general revenue of the City. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner and consistent with the priorities set forth for in subsection (2) below.

- (b) Revenues in the City Sales and Use Tax Fund shall be used:
1. First, to satisfy the debt service requirements each fiscal year on any bonds issued by, or other obligations incurred by, the City, from time to time, allocated or tied to such dedicated revenue account including any refunding bonds; to finance municipal civic and convention center 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; and

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

203.15 Tax Imposed Is In Addition to Consumers Sales and Service Tax And Use Tax

The municipal sales and service tax and use tax imposed pursuant to this article shall be in addition to the State consumer sales and service tax and use tax imposed pursuant to articles 15, 15A and 15B of the Code of West Virginia, 1931, as amended, on sales made and services rendered within the boundaries of the City of Charles Town and, except as exempted or excepted, all sales made and services rendered within the boundaries of the City of Charles Town shall remain subject to the tax levied by the articles 15, 15A and 15B. Further, the municipal sales and service tax and use tax imposed pursuant to this article shall be imposed in addition to any tax imposed pursuant to the provisions of West Virginia Code § 7-18-1, § 8-13-6, § 8-13-7, and § 8-38-12.

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 the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City 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.

203.17 Repeal

All ordinances in conflict with this Ordinance are hereby repealed.

203.18 Effective Date.

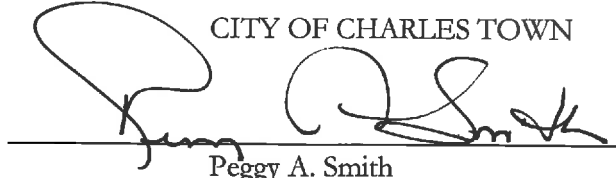
This Ordinance shall be forwarded to the West Virginia State Tax Department immediately upon adoption, and at least 150 days prior to July 1, 2015. In no case, however, shall the imposition of this municipal sales and service tax or use tax pursuant Articles 203.03 and 203.04 be collected earlier than July 1, 2015.

Amendments to Article 203 shall not be effective until July 1, 2015.

Strike-through indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.


BE IT ORDAINED that this Ordinance shall take effect and be in full force from and after the 20th day of January, 2015.

CITY OF CHARLES TOWN



Peggy A. Smith
Mayor, City of Charles Town

ATTEST:



Kiya Tabb
City Clerk

Date of First Reading: January 5, 2015

Passed: January 20, 2015