TOWN OF MARLINTON, WEST VIRGINIA
MUNICIPAL HOME RULE APPLICATION AND PLAN

Section I: Applicant Information

Type of Submission: Initial Plan

Name of Municipality: Town of Marlinton

Certifying Official: Samuel M. Felton, Jr., Mayor

Contact Person: Star Barlow, Finance/Office Manager

Address: 709 Second Avenue
Marlinton, West Virginia 24954

Telephone No.: 304-799-4315

E-Mail Address: townofmarlinton@frontiernet.net

Municipal Classification: Class IV

Population (2020 U.S. Census): 985

Marlinton Town Council

Samuel M. Felton, Jr., Mayor
Mary Clendenen, Recorder
Oliva Dean, Council Member
Scott Gibb, Council Member
Tom Miller, Council Member
Joe Smith, Council Member
Roger Trusler, Council Member

Section II: Narrative
Introduction and Executive Summary:

Home Rule Board of West Virginia
P.O. Box 11360
Charleston, WV 25339-1360

January 22, 2024

RE: Submission of Home Rule Application

Dear Members of the Home Rule Board of West Virginia:

On behalf of the Town of Marlinton, our residents, businesses, and all those past and present who have been invested in our well-being and our future, I thank you for your consideration of this application and your time in reviewing the attached documents which outline a plan to help us continue to rise above the effects of the fires and floods of the past and allow us to thrive throughout the 21st Century.

It has been my privilege, responsibility, and a great honor, to be trusted by our citizens to serve as Mayor of Marlinton, West Virginia. Home Rule will allow our governing body to address blind spots within our State Code while adhering to its framework. My conversations with other Mayors have always ended with the stories of the success of other small towns like Marlinton and provided the hope that one day, we too could become a Home Rule city.

It is with great pleasure and appreciation that I submit this Home Rule plan for your review. It has been worked on by myself, our governing body, and with the guidance of our city attorney. We have been diligent and thoughtful in its creation and hope you find it to be so as well.

Thank you for your time and energy in its review and I hope you find it to be as exciting a view into the future for Marlinton as we do.

Respectfully submitted,

Issues to be Addressed by Home Rule:

Municipal Sales and Use Tax – impose a 1% sales tax and eliminate selected business and occupation tax categories

Issue Category: Tax
Marlinton seeks to restructure its business tax structure, reducing and eliminating some classes of the Business and Occupation Tax and instituting a 1% sales tax in order to increase revenues for public safety operations. This new business tax structure will be fairer and more standardized, and similar to those in adjacent communities.

Specific Legal Barrier: §8-13C-4

Problem Caused by Legal Barrier:

Marlinton has a very small residential tax base and yet, being a remote town on a busy highway on the way to a resort destination (Snowshoe Mountain), provides service to a much larger population. Presently, the Town is only able to generate revenue via taxation by imposing a municipal business and occupation ("B&O") tax or by imposing a sales tax; W.Va. state code requires that the two taxes be mutually exclusive. W.Va. Code §8-13C-1 et seq. contemplates the imposition of a sales tax by municipalities either for pension relief or as an "alternative municipal sales tax" at a rate not to exceed one percent. However, a municipality may only impose such a sales tax if it completely eliminates its B&O tax. W.Va. Code §8-13C-4(b). The Town currently imposes a B&O tax on businesses, but the B&O tax is neither a wholly fair tax on some categories, nor does it provide adequate revenue to support community needs. Under W.Va. Code §8-1-5a(i)(14), municipalities participating in the Municipal Home Rule Program do not have the authority to pass an ordinance under Home Rule pertaining to taxation, except that a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal B&O tax. However, a sales tax alone, without the B&O tax, would exempt certain critical town businesses (banks, insurance, real estate agents) from paying a municipal tax.

Proposed Solution:

The Town proposes to impose a municipal sales tax of up to 1% on all taxable sales under the West Virginia Code within the town. At the same time, it will eliminate B&O tax on selected categories - Code 8 Manufactured or Prepared for Sale Products, 9 Retailers, 10 Wholesalers, 11 Public Service or Utility: Street and Electric Railways, 18 Amusement, 19 Service and All Other Business, 20 Rentals, Royalties or Fees —that would be subject to the sales tax. In this way, most business classes would pay some form of municipal tax. The increase in annual revenue based on this plan would be approximately $55,846.59 (see Section III-D: Fiscal Impact Worksheets and Formulas.)

Increased revenues would go to provide key municipal services, including (but not limited to):

- The increased revenue will be used to fund and equip our Municipal Police Department. Depending on the actual monies realized from the 1% Sales Tax, the Town intends to apply the following percentages to the following categories: Public Safety 45%, Other Safety & Security including ADA compliance 35%, Equipment upgrades 10%, Special Account to apply to future cost-share grant opportunities 10%.

The vast majority of W.Va. municipalities accepted into the Home Rule Program have proposed this business tax restructuring in one form or another, and it appears to be meeting with widespread acceptance and success.

Section III: Attachments

1. Completed Plan Checklist.
2. Affidavit of Legal Advertisement Providing Notice of Public Hearing.
3. Minutes of Public Hearing.
4. Copy of Adopted Ordinance Authorizing Submission of Plan.
5. Fiscal Impact Worksheets and Formulas.
6. Attorney Opinion.
7. State of West Virginia Fees Statement and Affidavit
6. Proposed Ordinance Implementing Sales and Use Tax.
7. Proposed Ordinance Amending Business and Occupation Tax.

Attachment 1

Completed Plan Checklist

HOME RULE APPLICATION, PLAN AND AMENDMENT CHECKLIST

_____ Class II legal advertisement of Public Hearing

Dates 02/01 & 02/08/24

_____ Notice of Public Hearing to Municipal Home Rule Board (MHRB) and Cabinet Secretary of every State department

_____ Plan available for public inspection 30 days prior to Public Hearing

_____ Hearing

Date 03/04/24 6PM

_____ Ordinance authorizing plan or amendment

1st reading date 03/04/24 7PM

2nd reading date 03/11/24 6PM

3rd reading date & Date of adoption 03/18/24 6PM

_____ Required narrative presentation of each separate proposal (see Sample Form Application)

ATTACHMENTS

_____ Affidavit of legal notice of Public Hearing

_____ Minutes of Public Hearing, including comments (if any)

_____ Certified copy of ordinance authorizing plan or amendment

_____ Fiscal statement demonstrating municipality's ability to manage costs or liabilities associated with proposals

_____ Affidavit that municipality owes no outstanding State fees

_____ Attorney opinion letter that application and plan or amendment complies with applicable State law

_____ Submit eight (8) originals and one (1) electronic copy of application plan or amendment to the MHRB 03/19

Attachment 2

Affidavit of Legal Advertisement Providing Notice of Public Hearing

Legal Ad – Class II

DATES PUBLISHED: February 1, 2024 and February 8, 2024

NOTICE OF PUBLIC HEARING

TOWN OF MARLINTON

APPLICATION UNDER MUNICIPAL HOME RULE PROGRAM

Notice is hereby given by the Town of Marlinton, West Virginia, that the Town Council will hold a public hearing on Monday, March 4, 2024 at 6:00 p.m. at the Marlinton Municipal Building Auditorium, 709 Second Avenue, Marlinton, West Virginia for the purpose of providing members of the public an opportunity to speak either in favor of, or in opposition to, the proposed Town of Marlinton Application and Plan to participate in the West Virginia Municipal Home Rule Program pursuant to West Virginia Code §8-1-5a. The comments provided by members of the public will be considered by the Town in the completion of the Town's Application and Plan. A copy of the Application and Plan is on file at the Town Hall Office, Marlinton Municipal Building, 709 Second Avenue, Marlinton, West Virginia and is available for review by members of the public Monday – Friday, 8 a.m. – 4 p.m. or online at https:/townofmarlintonwv.com/alerts-announcements/ .

The first reading of the ordinance approving the Town of Marlinton's Application and Plan to participate in the West Virginia Municipal Home Rule Program is scheduled to be held on Monday, March 4, 2024 at 7:00 p.m. at the Marlinton Municipal Building Auditorium, 709 Second Avenue, Marlinton, West Virginia.

Mary K. Clendenen
Recorder

[NEED TO ATTACH PROOF OF PUBLICATION]

Attachment 3

Minutes of Public Hearing

[NEED TO ATTACH MINUTES]

AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF POCAHONTAS, to wit:

I, Mary Clendenen, having been duly sworn, do hereby state and affirm the following:

1. That, I am the elected Recorder of the Town of Marlinton, WV, having been elected on _____, and serving from that date to the present; and

2. That a copy of the Town of Marlinton's proposed Home Rule Plan was made available for public inspection at Marlinton Town Hall, 709 Second Ave., Marlinton, WV 24954, each business day during regular business hours from _____ [30 DAYS BEFORE PUBLIC HEARING], through and including _____ [THE DATE OF THE PUBLIC HEARING]; and

3. That a public hearing on the Town of Marlinton's Proposed Home Rule Plan was properly noticed and held a Marlinton Town Hall, 709 Second Ave., Marlinton, WV 24954, on [DATE OF PUBLIC HEARING]; and

4. That attached hereto are a true and exact copies of the agenda and the minutes of the aforesaid Public Hearing.

This affidavit if sworn and submitted this _____ day of _____, 2023.

_____
Mary Clendenen, Recorder

STATE OF WEST VIRGINIA,
COUNTY OF POCAHONTAS, TO-WIT:

The foregoing affidavit was acknowledged before me by Mary Clendenen, this _____ day of _____, 2023.

My commission expires: _____.

{SEAL}

_____
Notary Public

Attachment 4

Copy of Adopted Ordinance Authorizing Submission of Plan

Ordinance ___

Councilmember _____ introduced the following Ordinance and moved for its adoption, which motion was seconded by Councilmember _____. The Ordinance being in the following words and figures:

"AN ORDINANCE AUTHORIZING THE TOWN OF MARLINTON TO SUBMIT AN APPLICATION AND WRITTEN PLAN TO THE MUNICIPAL HOME RULE BOARD REQUESTING APPROVAL FOR THE TOWN OF MARLINTON TO ADOPT A MUNICIPAL SALES AND SERVICE TAX AND A MUNICIPAL USE TAX PURSUANT TO W. VA. CODE § 8-1-5a"

WHEREAS, the Town of Marlinton desires to seek approval from the Municipal Home Rule Board to participate in the Home Rule Program and to seek approval to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code § 8-1-5a.

NOW, THEREFORE, THE TOWN OF MARLINTON HEREBY ORDAINS:

That on behalf of the Town of Marlinton, the Mayor and the Town Administration are hereby authorized and requested to submit to the Municipal Home Rule Board an application and municipal home rule plan, attached hereto as Exhibit A, consistent with W. Va. Code § 8-1-5a, requesting approval to allow the Town of Marlinton to adopt a municipal sales and service tax and a municipal use tax.

This Ordinance shall be effective upon passage.

I, the undersigned Recorder of the Town of Marlinton, State of West Virginia, do hereby certify that the foregoing Ordinance was duly passed and adopted by the Town Council of the Town of Marlinton, and that the proposed Ordinance was read by title at not less than three (3) meetings of the Town Council with at least one (1) week intervening between each meeting, and that the Ordinance is now in full force and effect.

_____
Passed First Reading

_____
Passed Second Reading

_____
Passed Third Reading

_____
Mary Clendenen, Recorder

Attachment 5

Fiscal Impact Worksheets and Formulas

B&O Tax Reduction: Table 1				
B&O Category:	**s based on 2023 Gross Revenue (1-1-23 to 1**	**Current Rate**	**New Rate**	**Reduction based on 2019 Gross Revenue**
Wholesale	$ 1,585,368.24	0.00	0.00	$0.00
Service	$ 9,727,775.60	0.04	0.00	$3,891.11
Retailers	$ 37,842,935.70	0.04	0.00	$15,137.17
Rentals	$ 700,824.72	0.04	0.00	$280.33
Public Service	$ -	0.50	0.00	$0.00
Manufactured	$ 44,483.23	0.04	0.00	$17.79
Amusement	$ -	0.25	0.00	$0.00
		Total B&O Reduction:		**$19,326.40**

Table 2 outlines how our Taxable Gross Retail Total was determined by removing estimated exemptions.
It illustrates the estimated revenue generated by the 1% sales tax, less the 5% administrative fee to the state.
This also considers the exemptions for car dealers, pharmacies, groceries, gas, etc. based figures provided by retailers who sell tax exempt products and estimates of exempt volume.

Net 1% Sales Tax Revenue: Table 2		
Category	**Gross Retail**	**Amount of Gross Exempt**
Auto Sales & Fuel (100%)	$ 2,724,589.46	$ 2,724,589.46
Convenience Stores (90%)	$ 12,587,255.32	$ 11,328,529.78
Pharmacies (95%)	$ 9,546,012.02	$ 9,068,711.41
Grocery/Pharmacy (80%)	$ 29,012,224.54	$ 23,209,779.63
Grocery (95%)	$ 7,489,509.78	$ 7,115,034.29
TOTALS	$ 61,359,591.12	**$ 53,446,644.57**
GROSS RETAIL B&O LESS EXEMPTIONS		$ 7,912,946.55
1% SALES TAX OF GROSS RETAIL B&O		$ 79,129.46
SALES TAX REVENUE LESS 5% STATE ADMIN FEE		**$ 3,956.47**
1% ESTIMATED TAX REVENUE		$ 75,172.99

Table 3 Illustrates the total revenue change netted by the 1% sales tax, less the reduced B&O Revenue

Net Change in Revenue: Table 3		
Estimated 1% Sales Tax Revenue	$	75,172.99
Less Estimated Reduced B&O Tax Revenue	$	19,326.40
Net Change in Total Revenue	$	55,846.59

Attachment 6

Attorney Opinion

[DINSMORE LETTERHEAD]

Thomas W. White, Esq.
(304) 645-5360
thomas.white@dinsmore.com

_____, 2023

West Virginia Municipal Home Rule Board
c/o Courtney Shamblin, Executive Assistant
West Virginia Municipal Home Rule Board
P. O. Box 11360
Charleston, WV 25339-1360

RE: Town of Marlinton, West Virginia – Application to Participate in the Municipal Home Rule Program and Proposed Home Rule Plan
(Municipal Sales and Service Tax and Municipal Use Tax)

Dear Board:

I am legal counsel for the Town of Marlinton, West Virginia. I have reviewed the requirements of W. Va. Code § 8-1-5a, et seq., and the Town's Application to participate in the Municipal Home Rule Program, and am of the opinion that the proposed amendment complies with the relevant sections of the West Virginia Code.

The application does not provide for any proposed changes to ordinances, acts, resolutions or rules that are contrary to the provisions of West Virginia Code §§ 8-1-5a(i)(1) through (24) or attempts to do any act prohibited by West Virginia Code §§ 8-1-5a(j)(1-3) and that this application is fully compliant with West Virginia Code § 8-1-6.

Please contact me with any questions. Thank you.

Very truly yours,

Thomas W. White

Cc: Hon. Samuel M. Felton, Jr., Mayor

Attachment 7

State of West Virginia Fees Statement and Affidavit

AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF POCAHONTAS, to wit:

I, Samuel M. Felton, Jr., having been duly sworn, do hereby state and affirm the following:

1. That, I am the elected Mayor of the Town of Marlinton, WV, having been elected on _____, and serving from that date to the present; and

2. That as Mayor I am familiar with all of the financial affairs of the Town of Marlinton; and

3. That I hereby certify that the Town of Marlinton is current in the payment of all fees to the State of West Virginia

This affidavit if sworn and submitted this _____ day of _____, 2023.

_____
Samuel M. Felton, Jr., ~~Recorder~~
Mayor

STATE OF WEST VIRGINIA,
COUNTY OF POCAHONTAS, TO-WIT:

The foregoing affidavit was acknowledged before me by Samuel M. Felton, Jr., this _____ day of _____, 2023.

My commission expires: _____.

{SEAL}

_____
Notary Public

Attachment 8

Proposed Ordinance Implementing Sales and Use Tax

Ordinance ___

Councilmember _____ introduced the following Ordinance and moved for its adoption, which motion was seconded by Councilmember _____. The Ordinance being in the following words and figures:

"AN ORDINANCE TO IMPLEMENT A MUNICIPAL SALES AND SERVICE TAX AND A MUNICIPAL USE TAX PURSUANT TO W. VA. CODE § 8-1-5a."

WHEREAS, the Town of Marlinton has previously been approved to participate in the Municipal Home Rule Program pursuant to a written plan submitted to and approved by the Municipal Home Rule Board; and

WHEREAS, on _____, the Town of Marlinton received approval from the Municipal Home Rule Board to participate in the Municipal Home Rule Program; and

WHEREAS, on _____, the Municipal Home Rule Board approved the Town of Marlinton's written Home Rule Plan to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code § 8-1-5a; and

WHEREAS, pursuant to the authority granted by the Municipal Home Rule Board, W. Va. Code §§ 8-11-1, et seq., the council of the Town of Marlinton desires to implement a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code § 8-1-5a.

NOW, THEREFORE, THE TOWN OF MARLINTON HEREBY ORDAINS:

That the Town of Marlinton Code shall be amended by the addition of **ARTICLE ___ – MUNICIPAL SALES AND USE TAXES**, as fully set forth in the attached ordinance

This Ordinance shall be effective upon passage.

I, the undersigned Recorder of the Town of Marlinton, State of West Virginia, do hereby certify that the foregoing amendment to an Ordinance was duly passed and adopted by the Town Council of the Town of Marlinton, and that the proposed Ordinance was read by title at not less than three (3) meetings of the Town Council with at least one (1) week intervening between each meeting, and that the Ordinance is now in full force and effect.

_____
Passed First Reading

_____
Passed Second Reading

_____
Passed Third Reading

Mary Clendenen, Recorder

ARTICLE ___ - MUNICIPAL SALES AND USE TAXES.

____.01. Town Council Findings.

____.02. Definitions.

____.03. Imposition of Municipal Sales and Service Tax.

____.04. Imposition of Municipal Use Tax.

____.05. Calculation of Tax on Fractional Parts of Dollar.

____.06. State and Local Tax Bases.

____.07. Exceptions.

____.08. Credit Against Municipal Use Tax.

____.09. Tax cumulative.

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

____.11. State level administration.

____.12. Administrative procedures.

____.13. Criminal Penalties.

____.14. Automatic Updating.

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

____.16. *Intentionally omitted.*

____.17. Severability and Savings Clause.

____.18. Effective Date.

____.19. Notification of Tax Commissioner.

____.01. Town Council Findings.

(a) The Municipal Home Rule Board on [Insert Date], approved the amended home rule plan submitted by the Town of Marlinton, West Virginia, thereby allowing the Town to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code § 8-l-5a without the limiting restrictions in W. Va. Code § 8-13C-1 *et .seq*. In accordance with its amended home rule plan, the Town Council hereby finds and declares that the adoption by this Town 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 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 article be construed so as to accomplish the foregoing purposes.

____.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.

(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) "Town" or "this Town" means the Town of Marlinton, West Virginia.

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

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

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

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

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

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

(9) "Sales and use taxes" means the taxes imposed by sections 750.03 and 750.04 of this article.

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

(11) "Sales tax" means the tax levied by section ____.03 of this article.

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

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

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

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

(16) "Tax Commissioner" means the Chief Executive Office of the Tax Division of the Department of Revenue of this State, as provided in W. Va. Code § 11-1-1.

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

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

(19) "Use" for purposes of the tax imposed by section ____.04 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 Town for use thereafter solely outside this Town.

(20) "Use tax" means the tax imposed by section ____.04 of this article.

(21) "Vendor" means any person engaged in this Town 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.

____.03. 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 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 (1%) of the sales price, as defined in section ____.02 of this article of the tangible personal property, custom software or taxable service purchased or leased.

____.04. Imposition of Municipal 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 (1%) of the purchase price, as defined in section ____.02 of this article, of the tangible personal property, custom software or taxable service used within the Town.

____.05. Calculation of Tax on Fractional Parts of Dollar.

The tax computation under section ____.03 and section ____.04 of this article shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sales or use tax.

____.06. State and Local Tax Bases.

The taxable base of the taxes imposed by sections ____.03 and ____.04 of this article shall be identical to the sales and use tax base of this State except as provided in section ____.07 of this article, unless otherwise prohibited by federal law, as required by W. Va. Code § 11-15B-34.

____.07. Exceptions.

The taxes imposed by this article do not apply to:

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

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

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

(4) The sales tax imposed by section ____.03 of this article does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia.

(5) The use tax imposed by section ____.04 of this article does not apply to any purchase upon which the sales tax imposed by section ____.03 has been paid.

____.08. Credit Against Municipal Use Tax.

(a) A person is entitled to a credit against the use tax imposed by section ____.04 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 ____.04 of this article 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.

____.09. Tax cumulative.

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

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

(a) The tax commissioner is required by W. Va. Code § 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this State. The Town Treasurer 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 ___.03 of this article.

(b) Whenever boundaries of the Town change, whether by annexation or de-annexation, the Town Treasurer 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.

____.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 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 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 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 Treasurer, as provided W. Va. Code § 8-13C-7.

____.12. Administrative procedures.

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

____.13. Criminal Penalties.

Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the municipal sales and use taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set

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

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

____.16. *Intentionally omitted.*

____.17. Severability and Savings Clause.

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

____.18. Effective Date.

(a) This article shall become effective upon its adoption by the Town Council of this Town on _____. However, the Town Council hereby suspends imposition and collection of the municipal sales and use taxes imposed by this article until July 1, 2024, or such later first day of July 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 Town Council, the Town Treasurer shall forthwith send to the tax commissioner a certified copy of this ordinance, the rate and the boundary database required by section 750.10 of this article, 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 Article.

Attachment 9

Proposed Ordinance Amending Business and Occupation Tax

ORDINANCE____

Councilmember _____ introduced the following Ordinance and moved for its adoption, which motion was seconded by Councilmember _____. The Ordinance being in the following words and figures:

"AN ORDINANCE TO REDUCE THE BUSINESS AND OCCUPATION TAX IMPOSED BY ARTICLE 737.08 OF THE MARLINTON TOWN CODE."

WHEREAS, on _____ , the Town of Marlinton received approval from the Municipal Home Rule Board to participate in the Municipal Home Rule Program; and

WHEREAS, on _____ , the Municipal Home Rule Board approved the Town of Marlinton's written Home Rule Plan to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code §8-1-5a; and

WHEREAS, the authority to implement a municipal sales and service tax and a municipal use tax is contingent upon the Town concurrently reducing its business and occupation tax; and

WHEREAS, pursuant to the authority granted by W. Va. Code §§ 8-11-1, et seq., the council of the Town of Marlinton desires to amend Title V, Amendment I, Chapter 4 of the Marlinton Town Code. All provisions of the Marlinton Town Code not specifically amended in the attached ordinance shall remain in full force and effect.

NOW, THEREFORE, THE TOWN OF MARLINTON HEREBY ORDAINS that the Marlinton Town Code shall be AMENDED as follows: B&O Tax will be eliminated on the following Business Classifications: 8 Manufactured or Prepared for Sale Products, 9 Retailers, 10 Wholesalers, 11 Public Service or Utility: Street and Electric Railways, 18 Amusement, 19 Service and All Other Business, 20 Rentals, Royalties or Fees.

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This Ordinance shall be effective on July 1, 2024.

I, the undersigned Recorder of the Town of Marlinton, State of West Virginia, do hereby certify that the foregoing amendment to an Ordinance was duly passed and adopted by the Town Council of the Town of Marlinton, and that the proposed Ordinance was read by title at not less than three (3) meetings of the Town Council with at least one (1) week intervening between each meeting, and that the Ordinance is now in full force and effect.

_____
Passed First Reading

_____
Passed Second Reading

Passed Third Reading

Mary Clendenen, Recorder