

TOWN OF DE BEQUE ORDINANCE NO. 534

SERIES 2023

AN ORDINANCE AMENDING THE DE BEQUE MUNICIPAL CODE TO COMPLY WITH CHANGES IN STATE LAW PERTAINING TO THE COLLECTION AND ADMINISTRATION OF LOCAL SALES TAX.

The following describes the intent and purpose of this ordinance:

- a. The Town of De Beque (the Town) possesses the authority to levy a sales tax pursuant to C.R.S. § 29-2-102 and other applicable law.
- b. The Town has enacted a two percent (2%) local sales tax, which is codified in Chapter 4.08 of the municipal code.
- c. Recent changes in Colorado law require that local governments streamline sales tax and business licensing for businesses that have no physical presence or only incidental physical presence in local taxing jurisdictions. Concurrently, local governments may levy sales tax on remote or electronic sales, even when a retailer lacks a physical presence within the local taxing jurisdiction.
- d. The Town finds that retailers without a physical presence within the Town possess a competitive advantage over local brick and mortar businesses; it is the intent of the Town to reduce these competitive advantages and prevent tax avoidance by non-local retailers.
- e. Additionally, the Town finds that the delivery of tangible personal property within the Town by retailers without a physical presence burdens local transportation systems and other Town services.
- f. The Town has enrolled in the electronic sales and use tax simplification system, commonly known as SUTS, administered by the Colorado Department of Revenue for the purpose of easing the burdens of payment and collection of local sales taxes by all retailers, including those that do not have a physical presence in the Town.
- g. It is the intent of the Town to collect sales tax revenues from online retailers who lack a physical presence within the Town to the fullest extent permitted by law.
- h. This ordinance is intended to comply with applicable Colorado law pertaining to local sales tax; it does not enact a sales tax rate increase.

Therefore, the Town hereby repeals existing Chapter 4.08 of the of the De Beque Municipal Code and replaces that chapter with the following.

CHAPTER 4.08, SALES TAX

4.08.010 Definitions

A. The following definitions apply to this Chapter:

1. The Act. The term the “Act” means the Emergency Retail Sales Tax Act of 1935, as amended, C.R.S. § 39-26-101, et seq., and all implementing regulations.
2. Business. The term “Business” means any enterprise carried out by a person, firm, or legal entity (*e.g.*, a corporation, limited liability company, partnership, trust, joint venture, or other entity) for the purpose of economic gain or profit, except that the acts of a person providing labor or services for an employer shall not be within this definition.
3. Business in the Town. The term “Business in the Town” means performing or providing services involving a physical presence, including selling, leasing, renting, delivering, or installing tangible personal property, real property, products, or services for use or consumption within the Town of De Beque. The term Business in the Town also includes, but is not limited to: i) maintaining a building, store, office, warehouse, facility, or similar business premises within the Town; ii) sending employees, agents, contractors, or sales persons into the Town to solicit business, or to install, repair, or assist in the use of products or provide services; iii) maintaining one or more employees, agents, or salespersons within the Town; iv) owning, leasing, renting, or exercising control over real or personal property sales within the Town; v) a retailer who makes more than one delivery or engages in more than one transaction within the Town in any twelve (12) month period; or vi) making retail sales sufficient to meet the definition of economic nexus as set forth in this Chapter.
4. Economic Nexus. The term “Economic Nexus” means the connection between a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales in the Town and: i) in the previous calendar year the person, which includes a marketplace facilitator, has made retail sales into the State of Colorado exceeding the amount specified in C.R.S. § 39-26-102(3)(c), or as subsequently amended; or ii) in the current calendar year, ninety (90) days have passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), or as subsequently amended.

5. Food. The term “Food” means food for domestic home consumption, as defined in 7 U.S.C. § 2012 (k), for purposes of the federal food stamps program (SNAP), or any successor program, except alcoholic beverages, tobacco, hot foods, or hot food products ready for immediate consumption.
6. Incidental Physical Presence. The term “Incidental Physical Presence” means, with respect to Business in the Town, any combination of activities that occurs infrequently and is not regularly scheduled within the ordinary course of an individual or entity’s business activities.
7. Licensee. The term “Licensee” means the person or entity holding a state standard retail license from the Colorado Department of Revenue pursuant to C.R.S. 39-26-103 that authorizes a retailer to make retail sales in the state.
8. Marketplace Facilitator. The term “Marketplace Facilitator” means a person who contracts with a marketplace seller or multi-channel seller, for cash or other consideration, the sale of the marketplace seller’s tangible personal property, products, or services, through the person’s marketplace;
 - a. Engages directly or indirectly, through one or more affiliated persons, in transmitting or communicating the offer or acceptance between a purchaser and a marketplace seller or multichannel seller; and
 - b. Either directly or indirectly, through agreements with third parties, collects payment from the purchaser on behalf of the seller.
9. Marketplace Seller. The term “Marketplace Seller” means a person, regardless of whether the person does Business in the Town, who has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.
10. Multichannel Seller. The term “Multichannel Seller” means a person that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.
11. Person. The term “Person” means any individual, firm, corporation, limited liability company, partnership, joint venture, trust, or similar entity.
12. Premises. The term “Premises” means the location within the Town where business is carried out.
13. Retail. The term “Retail” means the sale of tangible personal property to a consumer, and not for purposes of resale.

14. Retailer. The term “Retailer” means a person engaged in the business of sales of tangible personal property to consumers, and not for resale. The term retailer includes a marketplace facilitator, marketplace seller, or a multichannel seller.
15. SUTS. The term “SUTS” means the electronic sales and use tax simplification system maintained by the Colorado Department of Revenue.
16. Tangible Personal Property. The term “Tangible Personal Property” means all goods, wares, merchandise, products, and commodities, subject to sales tax to the full extent otherwise defined by the Act.

4.08.020 Sales Tax Levy/Administration

- A. There is imposed on all sales of tangible personal property at retail, and on the furnishing of taxable services, a tax equal to two percent (2%) of the gross receipts.
- B. The sales tax shall be collected and paid by all persons or retailers doing Business in the Town as defined in this Chapter.
- C. Except as otherwise provided herein, the collection, administration, and enforcement of the sales tax shall be performed by the Colorado Department of Revenue.
- D. All retailers doing Business in the Town shall be Licensees who obtain and maintain in force at all times a Colorado state standard retail license as otherwise provided by law. It is unlawful for any retailer to do Business in the Town without being a Licensee.
- E. Every retailer doing Business in the Town is liable and responsible for the payment of the sales tax owing under this Chapter, which shall be remitted as otherwise provided by law. The sales tax levied by this Chapter shall not be absorbed by the retailer.
- F. All retailers doing Business in the Town shall remit the sales tax levied pursuant to this Chapter utilizing, and in conformity with, the electronic sales and use tax simplification system, SUTS, as mandated by the Colorado Department of Revenue.

4.08.030 Exemptions

- A. The following transactions are exempt from the sales tax levied under this Chapter:
 1. Sales of food;

2. All transactions exempt from state sales tax pursuant to C.R.S. 39-26-701 through 733, or as subsequently amended; and
3. The amount of any sales tax payable to the State of Colorado or any other taxing authority.

4.08.040 Retailer Fee The retailer remitting sales tax shall be authorized to collect and retain a collection fee in the amount of three and one-third percent (3.33%) of the total sales tax owing by the retailer each month.


4.08.050 Interpretation/Severability

- A. This Chapter shall be interpreted in a manner that conforms, as closely as possible, to the provisions of the Act.
- B. If any part of this Chapter shall be held to be invalid or unenforceable by any court, the relevant part shall be deemed stricken and the remainder of this Chapter shall be held to be fully enforceable.

4.08.060 Penalties In addition to all other remedies available at law, any person violating the provisions of this Chapter commits a Class B municipal offense and shall be punished accordingly.

Approved by the Board of Trustees this 27 day of June, 2023. This ordinance shall take effect thirty (30) days from the date of publication.

TOWN OF DE BEQUE BOARD OF TRUSTEES:


Shanelle Hansen, Mayor

6-27-23
Date

ATTEST:


Lisa Rogers, Town Clerk

06/27/2023
Date



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