

ORDINANCE NO. 3

Series 2021

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE SALES TAX ORDINANCE, CONCERNING REMOTE SALES

WHEREAS, the Town of Breckenridge, Colorado, ("Breckenridge" or the "Town"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the Town and is necessary to raise revenue with which to conduct the affairs and render the services performed by the Town; and

WHEREAS, pursuant to such authority, the Town has adopted and enacted a Sales Tax Code, under which Town sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this ordinance, under the Constitution or laws of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State ("Remote Sales"); and

WHEREAS, based upon such decision, the retailer's obligation to collect Remote Sales is no longer based on the retailer's physical presence in the jurisdiction by the Constitution or law of the United States, and the Town's Sales Tax Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of tangible personal property, products, or services into the Town relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the Town, but that still have a taxable connection with the Town; and

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales within the Town; and

WHEREAS, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales exposes the Town to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, the Town adopts this ordinance with the intent to address tax administration, and, in connection therewith, to establish economic nexus for retailers or

vendors without physical presence in the State and to require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Section 3-1-1 of the Breckenridge Town Code, entitled "Legislative Intent," is amended to read as follows:

3-1-1: LEGISLATIVE INTENT:

A. It is the intent of this Chapter that every person in the Town who purchases at retail or leases any "tangible personal property" or purchases a taxable service as defined by this Chapter is exercising a taxable privilege. All sales, leases, and purchases of "tangible personal property" as defined in this Chapter are taxable unless specifically exempted in this Chapter. The sales tax imposed on tangible personal property by this Chapter applies to each transfer of ownership, possession, and control of such property and may occur more than once during the life of the property.

B. No obligation to collect the sales tax required by this Chapter may be applied retroactively. Responsibilities, duties and liabilities described in this Chapter with respect to a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they became licensed to collect the Town's sales tax, or when they became legally obligated to collect the Town's sales tax under this Chapter.

Section 2. Section 3-1-2 of the Breckenridge Town Code, entitled "Definitions," is amended by the addition of the following definitions:

ECONOMIC NEXUS:	<p>The connection between the Town and 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 into the Town, and:</p> <p>(A) In the previous calendar year, 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), as amended; or</p> <p>(B) In the current calendar year, 90 days has 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), as amended.</p>
MARKETPLACE:	<p>A physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.</p>
MARKETPLACE FACILITATOR:	<p>(A) A person who:</p> <p>(1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;</p> <p>(2) Engages directly or indirectly, through one or more affiliated persons, in transmitting</p>

	<p>or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and</p> <p>(3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.</p> <p>(B) "Marketplace Facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.</p>
MARKETPLACE SELLER:	A person, regardless of whether or not the person is engaged in business in the Town, which 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.
MULTICHANNEL SELLER:	A retailer 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.

Section 3. The following definitions in Section 3-1-2 of the Breckenridge Town Code are amended to read as follows:

ENGAGED IN BUSINESS IN THE TOWN:	<p>Performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the Town. Engaged in Business in the Town includes, but is not limited to, any one of the following activities by a person:</p> <p>(1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the Town;</p> <p>(2) Sends one or more employees, agents or commissioned sales persons into the Town to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;</p> <p>(3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the Town;</p> <p>(4) Owns, leases, rents or otherwise exercises control over real or personal property within the Town; or</p> <p>(5) Makes more than one delivery into the Town within a twelve month period if a retailer in the state of Colorado; or</p> <p>(6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Section 3-1-2.</p>
RETAILER:	<p>Any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms "retailer" shall include, but is not limited to, any:</p> <p>(1) Auctioneer;</p> <p>(2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or</p>

	services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-contractor, when acting in the capacity of a retailer; (5) Marketplace facilitator, marketplace seller, or multichannel seller.
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Section 4. Chapter 1 of Title 3 of the Breckenridge Town Code is amended by the addition of a new Section 3-1-7-1, entitled "Marketplace Facilitators," which shall read as follows:

**3-1-7-1: MARKETPLACE FACILITATORS:**

- A. A marketplace facilitator engaged in business in the Town is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.
- B. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer under 3-1-2. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
- C. The liabilities, obligations, and rights set forth under this section are in addition to any duties and responsibilities of the marketplace facilitator has under this chapter if it also offers for sale tangible personal property, products, or services through other means.
- D. A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this chapter if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
  - 1. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this chapter; or
  - 2. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this chapter made in or through the marketplace facilitator's marketplace.
- E. If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.
- F. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

Section 5. Section 3-1-22 of the Breckenridge Town Code, entitled "Licenses For Retail Sellers," is amended to read as follows:

**3-1-22: LICENSES FOR RETAIL SELLERS; EXEMPTION:**

- A. It shall be unlawful for any person to engage in the business of selling at retail on or after July 1, 1984, without having first obtained a Breckenridge sales tax license.

B. Any retailer having only an economic nexus with the Town and that has not established a physical presence in the Town shall be exempt from the provisions Section A of this Section; provided, however, such retailer shall furnish in writing to the finance director any change to the name and address or contact information of the retailer or any other material change to the information submitted on an application for a license with 30 calendar days of such change.

Section 6. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 7. The adoption of this ordinance does not result in a new tax, a tax rate increase, or a tax policy change directly causing a net tax revenue gain to the Town within the meaning of Article X, §20 of the Colorado Constitution.

Section 8. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 9. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
PUBLISHED IN FULL this 8th day of December, 2020.

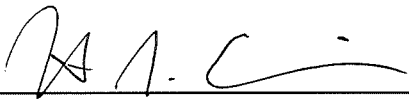
This ordinance was published in full on the Town of Breckenridge website on December 9, December 10, December 11, December 12 and December 13, 2020.

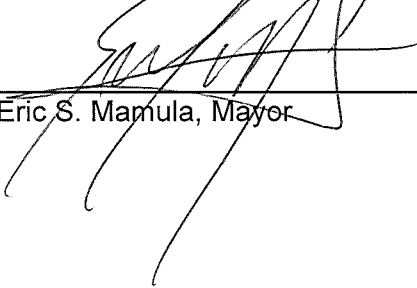
A public hearing on this ordinance was held on January 12, 2021.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE  
TOWN'S WEBSITE this 12th day of January, 2021. A copy of this Ordinance is available for  
inspection in the office of the Town Clerk.

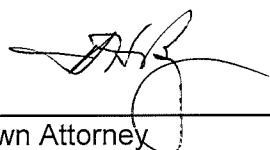
ATTEST:

TOWN OF BRECKENRIDGE

  
\_\_\_\_\_  
Helen Cospolich, CMC, Town Clerk

  
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Eric S. Mamula, Mayor

APPROVED IN FORM

  
\_\_\_\_\_  
Town Attorney

1/12/21  
\_\_\_\_\_  
Date

This Ordinance was published on the Town of Breckenridge website on January 13, January 14, January 15, January 16 and January 17, 2021. This ordinance shall become effective on February 17, 2021.