



**City Hall, First Floor Conference Room**  
401 S. Johnstone Avenue  
Bartlesville, OK 74003

**SPECIAL "WORKSHOP" MEETING  
OF THE BARTLESVILLE CITY COUNCIL**

**Monday, September 20, 2021  
7:00 p.m.**

**Mayor Dale Copeland  
918-338-4282**

**AGENDA**

- 1. Call to order the business meeting of the Bartlesville City Council by Mayor Copeland.**
- 2. Roll Call and Establishment of a Quorum.**
- 3. Invocation.**
- 4. Citizens to be heard.**
- 5. Discuss use tax law, sources of use tax, purposes of use tax, and other information related to municipal use taxes. Presented by Mike Bailey, City Manager and Jason Muninger, CFO/City Clerk.**
- 6. City Manager and Staff Reports.**
- 7. City Council Comments and Inquiries.**
- 8. Adjournment.**

**The Notice of Meeting and Agenda was received and filed in the Office of the City Clerk, 401 S. Johnstone Ave., Bartlesville, Oklahoma, at 4:00 p.m. on Friday, September 10, 2021 and posted in prominent public view at City Hall same day at 5:00 p.m.**

JASON MUNINGER  
Jason Muninger, CFO/City Clerk

/s/ ELAINE BANES  
by Elaine Banes, Deputy City Clerk

\*City of Bartlesville Webcast of meeting: <https://www.cityofbartlesville.org/city-government/city-council/webcast/> and Channel 56 on Sparklight.

**Open Meetings Act Compliance (25 O.S. Sec. 301 et seq.):** all discussion items are subject to possible action by the City Council. Official action can only be taken on items which appear on the agenda. The City Council may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item. When more information is needed to act on an item, the City Council may refer the matter to the City Manager, Staff or City Attorney, or back to a committee or other recommending body. Under certain circumstance, items are deferred to a specific later date or stricken from the agenda entirely. Agenda items requiring a public hearing as required by law will be so noted. The City Council may at their discretion change the order of the business agenda items. City of Bartlesville encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, notification to the city Clerk at least one working day prior to the scheduled meeting is encouraged to make the necessary accommodations. The City may waive this rule if signing is not the necessary accommodation.



**Agenda Item** \_\_\_\_\_  
September 15, 2021  
Prepared by Mike Bailey  
and Jason Muninger

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## I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Discuss use tax law, sources of use tax, purpose of use tax, and other information related to municipal use taxes.

Attachments:

OTC Sales and Use Tax Brochure

## II. STAFF COMMENTS AND ANALYSIS

Use tax is a companion tax to sales tax that was traditionally paid by the purchaser and not the seller. Until very recently, use tax had a very low compliance rate for individuals and as such, it was primarily regarded as a business type tax. Bartlesville has not previously adopted a use tax in order to foster a business-friendly tax policy in the interest of economic development.

However, use tax changed dramatically with the advent of “internet sales tax” collections. In the Supreme Court Case of Quill v. North Dakota in 1992, SCOTUS ruled that a retailer must have a physical presence in a state before the State could require the seller to collect sales tax from its in-state customers. This ruling, made in relation to catalog sales, made it impossible for states to force remote sellers to collect sales tax. Thus, the Quill case guided remote sales tax collection (including the booming internet sales sector) until 2018.

In 2018, the Supreme Court heard the case of South Dakota v. Wayfair and overturned the precedent set in the Quill case. SCOTUS concluded that the Quill decision was an incorrect interpretation of the Commerce Clause and that it “judicially created tax shelters for businesses that decide to limit their physical presence and still sell their goods and services.” The court also noted that the Quill rule actually discouraged interstate commerce by creating incentives to avoid economic activity in many states. This ruling brought many changes to remote seller sales tax laws across the country. Most importantly for the City of Bartlesville, the State of Oklahoma passed the Oklahoma Marketplace Facilitator Act.

This law requires marketplace facilitators, remote sellers, and referrers with at least \$10,000 of sales in the state of Oklahoma to collect and remit remote sales tax (which is codified as use tax in Oklahoma). Suddenly, remote vendors held the same obligations as in-state vendors. However, out-of-state vendors were required by law to remit taxes on remote sales as use tax, not sales tax. As Bartlesville does not have a use tax, we do not receive any taxes on internet sales.

The growth in online sales has led to a substitution from sales to use tax, and purchases that have traditionally generated sales tax are now accounted for as use tax. Due to these changes, use tax is no longer primarily a business tax and is increasingly composed of consumer purchases previously taxed as sales tax.

As a result of this substitution, use tax growth is outpacing sales tax growth by a large margin. In fact, use tax has grown by 12% across the state in the last 24 months, while sales tax has only grown by 2% during that same period. Staff believes that the pandemic accelerated the growth in online shopping which harms our traditional sales tax. It is expected that habits formed during the pandemic will continue, so this effect will likely be permanent.

An analysis performed earlier this year indicated that Bartlesville is in the minority in our state by not having a use tax. Below are the statistics that staff had compiled prior to the most recent census based on population:

- Bartlesville is the 12<sup>th</sup> largest city in the state.
- Bartlesville is the only city in the top 100 by population without a use tax.
- The next largest city without a use tax is Bethel Acres with 3,147 population
- There are only 2 cities (including Bartlesville) over 1,500 population without a use tax.
- 98.5% of the cities in the top 200 by population have a use tax.
- 97% of the cities in the top 300 by population have a use tax.

Times have changed dramatically in relation to use tax. The advent of “internet sales tax” being codified as use tax in the State of Oklahoma has required cities to adopt a use tax in order to ensure that remote vendors must play by the same rules as local vendors. The stakes are now much higher than in the past.

Traditional sales tax is still our largest source of revenue, but much of the growth in retail sales is shifting to online sales. Without a use tax, we will likely be forced to continually increase our sales tax to overcome the lack of growth. This is an unsustainable model that requires diversification to avoid long-term disruption to essential services.

Please schedule this for discussion only at our September 20 workshop.

### **III. RECOMMENDED ACTION**

Informational item only at this time.



## Do I need to pay sales tax?

### SALES TAX

A TAX CHARGED AND COLLECTED ON THE STATE, COUNTY AND CITY LEVEL (WHERE APPLICABLE) ON ALL TRANSFERS OF TITLE OR POSSESSION OF TANGIBLE PERSONAL PROPERTY AND CERTAIN SERVICES THAT OCCUR WITHIN THIS STATE.



### INDIVIDUALS



### BUSINESSES

Pay sales tax on retail product purchases and taxable services.

Charge, collect and remit state, county and city sales taxes.



### REMOTE SELLERS

Sellers who do not maintain a place of business in Oklahoma



Who sell at least \$100,000 worth of taxable merchandise in the state of Oklahoma during the preceding or current calendar year are required to collect the appropriate state and local use tax from the customer.

Sold at least \$10,000 worth of taxable merchandise in the state of Oklahoma during the previous 12 months, must elect to either report and remit Oklahoma tax or comply with statutory notice and reporting requirements.

Remote sellers who do not meet the \$100,000 sales threshold will still be required to notify purchasers on their retail internet website or retail catalog and customer invoices, that use tax is imposed and must be paid by the purchaser, unless otherwise exempt, on items brought into Oklahoma for use or consumption.

Must send an annual statement to their Oklahoma customers by February 1 notifying them of the amount of their total purchases made during the previous calendar year.

[Sales/Use Tax Rate Locator >](#)

[City/County Tax >](#)

[Military Tax >](#)

[Streamline Sales Tax >](#)



## Do I need to pay use tax?

### USE TAX

TAX PAID ON THE STATE, COUNTY AND CITY LEVEL (WHERE APPLICABLE) ON TANGIBLE PERSONAL PROPERTY PURCHASED AND BROUGHT INTO THIS STATE FOR STORAGE, USE OR CONSUMPTION. USE TAX IS MADE UP OF TWO TYPES:



#### VENDOR



When the seller charges use tax on products when they are purchased by the consumer.



#### CONSUMER



When the purchaser isn't charged sales or use tax on tangible personal property, they bring in from out of state to use or consume.



#### WHAT



Individuals can also pay use tax for untaxed items. If you buy something online from a company that's out of state and it's shipped to you and you didn't get charged tax on it, you probably owe use tax.

You can pay use tax at [oktap.tax.ok.gov](http://oktap.tax.ok.gov). Use tax can also be noted and paid on the **Oklahoma 511 income tax form**.



#### WHERE