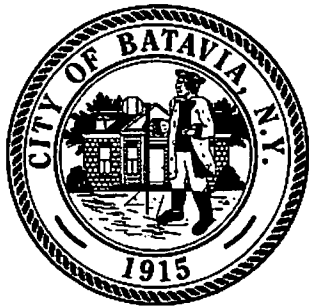


**BATAVIA CITY COUNCIL
SPECIAL CONFERENCE MEETING**

**City Hall - Council Board Room
One Batavia City Centre
Monday, September 10, 2018 at 7:00 PM**

AGENDA

- I. Call to Order
- II. Sales Tax Agreement with Genesee County
- III. Adjournment



City of Batavia

Memorandum

To: Honorable City Council

From: Matt Worth, Interim City Manager

Date: September 3, 2018

Subject: Sales Tax Agreement with Genesee County

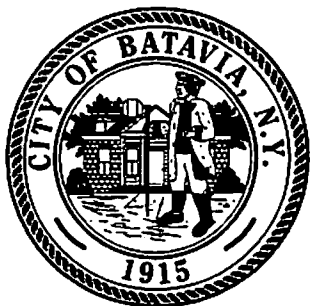
History

The City of Batavia and Genesee County first entered into a sales tax agreement in 1999 as part of a larger plan to increase and extend public water supply to various targeted areas within the County. The expectation being that with the expansion of public water, economic growth would be promoted throughout the County. The City would be the “hub of the wheel” with an existing water supply that could be utilized, and also as the population center containing much of County government, Financial Institutions, and Medical Services that would be the central services to support this growth. It was also understood that the City was essentially “built out” and that the resulting growth would not benefit the City under the current preemption of sales tax that had been taking place. A shared percentage of total County sales tax was the agreement that was entered into and has been a successful model ever since.

The agreement allowed for the City to receive 16% of the County’s share of sales tax, 50% to remain with the County and 34% to be shared with the remaining municipalities throughout the County. This agreement was extended, in this format, in 2007 for a ten-year period, and extended an additional 10 months in 2017 with an expiration of December 31, 2018.

Transition out of Existing Agreement

In 2016 Genesee County notified the City that it was not willing to renew the sales tax agreement in its current form. The County referenced pressures to construct a new jail, and replacement of bridges that are in various stages of dis-repair. The County proposed freezing sales tax disbursements at existing levels which would stay flat into the future. The impact to the City would be significant under the proposal, and seemed to be counter to the stated goals of the original agreements. The City, County, and GAM agreed to a sales tax/water agreement subcommittee to review possible solutions in an



City of Batavia

advisory capacity. The subcommittee charged administrative staff from both the City and County to meet and find acceptable solutions to the sales tax and water issues in an effort to create new agreements. This process resulted in a ten month extension of the agreements until December 31, 2018 to allow the various parties time to find common ground.

Transition into New Agreement

Staff from both the City and County have continued to meet, and have made every effort to understand the concerns and long-term needs of all municipalities involved. These meetings have resulted in several attempts to craft sales tax and water agreements that will allow for expanded water service, continued economic growth and resources for capital expenditures into the future. As is often the case, the teams had to get through a lot of difficult negotiations before finding solutions that both sides felt were acceptable.

The New Agreement

The amended sales tax agreement have been crafted for consideration by City Council and the County Legislature. The agreement allows for the City to receive its current share of sales tax (16%) thru 2018 with an ability for that amount to grow in future years by a maximum of 2% per year. If future sales tax growth exceeds 2% annually, the County will retain the amount above 2% resulting in the City's overall share changing even though the City received additional funds. Assuming that there will be growth above 2% during some years, eventually the City's share of sales tax will become 14% of the total which then removes the 2% maximum growth cap. The City will remain at 14% thereafter for the remainder of the contract.

This agreement allows for the City to continue to share in the total growth of sales tax countywide, while allowing for the County to collect additional funds for capital improvements (bridges and jail, etc.) in good years where sales tax growth exceeds 2%. The 14% floor is an additional safety net for the City to share in good years above 2% once that threshold is reached.

Supporting Documentation

Draft Agreement

Draft Resolution

**AMENDED AND RESTATED SALES TAX ALLOCATION AGREEMENT
BETWEEN THE COUNTY OF GENESEE AND THE CITY OF BATAVIA**

THIS AMENDED AND RESTATED AGREEMENT (hereinafter “current Agreement”) made the _____ day _____, 2018, by and between the County of Genesee, a municipal corporation of the State of New York, with offices located at the Old Courthouse, 7 Main Street, Batavia, New York, 14020 (hereinafter “County”), and the City of Batavia, a municipal corporation of the State of New York with offices located at One Batavia City Centre, Batavia, New York 14020 (hereinafter “City”).

WITNESSETH:

WHEREAS, the Parties have recognized in the past and continue to recognize that it is in the best interest of the County and the City, and all of the citizens thereof, to provide for a sharing of sales tax revenue in a manner that stabilizes the sales tax income of the City, and

WHEREAS, in furtherance of this stabilization process, the County and City have previously entered into several contracts regarding this issue, and

WHEREAS, one of these contracts previously entered into by the parties was in a document entitled “Agreement Sales Tax Allocation County of Genesee and City of Batavia”, dated December 31, 2007, (hereinafter “2007 Agreement”) which expired on February 28, 2018, and

WHEREAS, the parties subsequently entered into a “Sales Tax Allocation Amended Agreement Between the County of Genesee and the City of Batavia”, dated June 19, 2017, (hereinafter “2017 Amended Agreement”), which extended the length of the 2007 Agreement until December 31, 2018, with all of the other terms and conditions set forth in the 2007 Agreement remaining in full force and effect until the latter termination date, and

WHEREAS, the Parties hereto wish to enter into the current Agreement pursuant to subdivision c of Section 1262 of the Tax Law of the State of New York, in order to continue to provide for the sales tax allocations as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

FIRST: The County shall, during the term of this current Agreement, have the exclusive authority to impose all of the taxes described in Articles 28 and 29 of the Tax Law of the State of New York, pursuant to the provisions of Section 1210(a) and 1224(p) of said Law and at a rate of three percent (3%) and one percent (1%) respectively, and shall not set aside any part thereof for County purposes or educational purposes, except as otherwise provided in the current Agreement.

SECOND: The City, during the term of the current Agreement, shall refrain from imposing any of the taxes described in Article 28 of the Tax Law, effective January 1, 2019.

THIRD: The net collections of all sales tax received by the County shall be allocated and distributed as follows:

- A. All of such monies not allocated as set forth below to the City of Batavia, shall be set aside for County purposes and shall be available for any legitimate County purposes, with no allocation to be made for the area outside of the City of Batavia.

- B. In the event that the annual total countywide sales tax net collections increases in any amount as compared to the immediate preceding year, the County will pay to the City an annual sales tax allocation payment amount determined as follows: 1) calculate the County's total percentage increase in countywide sales tax net collections, then 2) multiply the total dollar amount of the sales tax allocation payment made to the City by the County in the immediate preceding year, times this calculated percentage increase, then 3) add this product to the total dollar sales tax allocation payment amount received by the City in the immediate preceding year; provided further, that the City's total dollar sales tax allocation payment amount shall not increase compared to the immediate preceding year by an amount that exceeds 2.0% in any given year, except as otherwise set forth below.
- C. In the event that the annual total countywide sales tax net collections decreases in any amount as compared to the immediate preceding year, the County will pay to the City an annual sales tax allocation payment amount determined as follows: 1) calculate the County's total percentage decrease in countywide sales tax net collections, then 2) multiply the total dollar amount of the sales tax allocation payment made to the City by the County in the immediate preceding year, times this calculated percentage decrease, then 3) subtract this product from the total dollar sales tax allocation payment amount received by the City in the immediate preceding year; provided further, that there shall be no maximum cap in the percentage decrease of the City's total dollar sales tax allocation payment amount in any given year, except as otherwise set forth below.
- D. Notwithstanding any of the foregoing provisions above, in any given year, the City's total dollar sales tax allocation payment amount as compared to the total dollar amount of the sales tax net collections received countywide by the County in this same year, shall not be less than 14.0%.
- E. The City's base year of 2018 was calculated using the previous contract allocation of 16% of sales tax net collections received countywide in the calendar year Jan 1, 2018 through December 31, 2018.

FOURTH: The implementation of the distributive formula contained in "Third" above is contingent upon agreement by the City not to pre-exempt the sales tax imposed by the County during the term of this current Agreement.

FIFTH: The term of this current Agreement shall be forty (40) years commencing on January 1, 2019 and ending on December 31, 2058.

SIXTH: That on or before the first day of July, 2056, the Genesee County Legislature shall cause a committee to be convened consisting of members of the County Legislature and members of the City Council, which committee shall recommend to the Legislature and the City Council whether or not to amend, modify or extend this current Agreement for an additional term.

SEVENTH: The Legislature and the City Council thereafter, and prior to July 1, 2058, shall, by resolution, notify the other body that it intends, at the end of the term or any extension thereof, to terminate, amend or modify this current Agreement.

EIGHTH: Within the time frames set forth herein and the statutory notice requirement in Articles 28 and 29 of the Tax Law, this current Agreement may be modified, terminated or otherwise amended in the event that both the City Council and the County Legislature, by formal resolution, mutually agree to do so. Neither party may do so unilaterally. Any such modification, termination or amendment must be reduced to writing, executed by such officers of each body as they shall respectively designate and be approved by the Office of the State Comptroller as set forth below.

NINTH: This current Agreement shall be interpreted pursuant to the laws of the State of New York, and any action or proceeding brought to enforce any provisions hereof, shall be venued in Genesee County.

TENTH: The prior aforesaid 2007 Agreement and 2017 Amended Agreement between the parties are hereby replaced in their entirety, and upon execution of this current Agreement, these two prior documents shall be null and void.

ELEVENTH: The current Agreement may be executed in counterparts, each of which may be deemed as an original, and all of which taken together, shall constitute one Amended and Restated Agreement binding upon both parties.

TWELTH: This current Agreement is subject to the approval of the State Comptroller of the State of New York as set forth in section 1262(c) of the Tax Law.

IN WITNESS WHEREOF, the parties have signed this current Amended and Restated Agreement the day and year first written above.

CITY OF BATAVIA

By: _____
Eugene Jankowski Jr.
President, City Council

COUNTY OF GENESEE

By: _____
Robert Bausch
Chairman, County Legislature

#-2018

**A RESOLUTION ENTERING INTO AN AMENDED AND RESTATED SALES TAX
ALLOCATION-AGREEMENT WITH THE COUNTY OF GENESEE**

Motion of Councilperson

WHEREAS, the City Council by resolution adopted December 31, 2007 authorized the President of City Council to execute the Sales Tax ("Agreement") between the City of Batavia and County of Genesee; and

WHEREAS, paragraph Five of the Agreement provides that the current term is ten (10) years, running from March 1, 2008 through February 28, 2018; and

WHEREAS, this Agreement was further extended by resolution adopted February 9, 2017 an additional ten (10) months through December 31, 2018; and

WHEREAS, paragraph Six of such Agreement provides for formation of a committee with members of the County Legislature, City Council and elected officials of Villages and Towns in Genesee County to recommend to the Legislature and City Council whether to amend, modify or extend the Agreement for an additional term; and

WHEREAS, this committee was formed and has convened as set forth in the sixth paragraph of the Agreement, in order to make a recommendation to the Legislature and the City Council as to whether or not to amend, modify or extend the Agreement for an additional term, and

WHEREAS, this committee has met numerous times, and has in fact recommended to the Legislature and the City Council that the Agreement be extended for a period of 40 years as outlined in the "Amended and Restated Sales Tax Allocation Agreement Between the County of Genesee and the City of Batavia"; and

WHEREAS, paragraph Seven of such Agreement states that within the time frames set forth herein and the statutory notice requirements in Articles 28 and 29 of the Tax Law, the Agreement may be modified, terminated or otherwise amended in the event that both the City Council and the County Legislature, by formal resolution, mutually agree to do so. Neither party may do so unilaterally. Any such modification, termination or amendment must be reduced to writing, executed by such officers of each body as they shall respectively designate and approved by the Office of the State Comptroller as set forth above.

NOW, THEREFORE, BE IT RESOLVED, that the City Council does hereby elect to extend the Sales Tax Agreement between the City of Batavia and County of Genesee dated September XX, 2018 effective January 1, 2019 for a period of forty years, from January 1, 2019 and through December 31, 2058, and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council President is authorized to execute an Amended and Restated Sales Tax Allocation Agreement between the County of Genesee and the City of Batavia through December 31, 2058.

**Seconded by Councilperson
and on roll call**