



# City of Elkins

## Rules and Ordinances Committee Meeting

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June 2, 2025

3:30 PM

Phil Gainer Community Center  
142 Robert E Lee Ave. Ext.

**Charter Authority of the Rules & Ordinances Committee:** Consider and propose to Council new and amended ordinances, rules, and policies.

### AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **Minutes**
  - a. Proposed minutes for the meeting of April 7, 2025.
4. **Reports**
5. **New business**
  - a. Bag limit and other sanitation topics
  - b. Council rules amendment
  - c. Amending §110.055 of the City of Elkins Municipal Business and Occupation Tax Ordinance to Incorporate a De Minimis Exemption for Certain Small Businesses and Independent Contractors in Accordance with HB 2451
6. **Announcements**
7. **Adjournment**



## CITY OF ELKINS AGENDA ITEM REPORT

<b>Meeting Date:</b>	June 2, 2025
<b>Section:</b>	Minutes
<b>Category:</b>	Action Item
<b>Agenda Item Name:</b>	Proposed minutes for the meeting of April 7, 2025.
<b>Recommended By:</b>	City Clerk
<b>Summary:</b>	Minutes proposed for the Committee's April 7 meeting
<b>Fiscal Impact:</b>	n/a
<b>Recommendation:</b>	Consider for approval
<b>Attachments:</b>	1. Rules and Ordinance Committee - 2025_04_07 - minutes_proposed

# **RULES AND ORDINANCE COMMITTEE MEETING MINUTES**

*Phil Gainer Community Center  
142 Robert E. Lee Ave. Ext.  
April 7, 2025  
3:30 p.m.*

Present were members C. Lowther (chair), A. Carroll, L. Severino.

Also present were Mike Kesecker (operations manager), Gerry Roberts (city attorney), Tracy Judy (treasurer), and Sutton Stokes (city clerk).

## **PUBLIC COMMENT**

There was no public comment.

## **MINUTES**

Carroll **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF DECEMBER 9, 2025.** The motion carried.

## **NEW BUSINESS**

The committee discussed possible requirements for petitions or other steps for citizens wanting to propose changes to city laws.

The meeting adjourned at 3:41 p.m.

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Name & Title

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Signature



## CITY OF ELKINS AGENDA ITEM REPORT

<b>Meeting Date:</b>	June 2, 2025
<b>Section:</b>	New business
<b>Category:</b>	Action Item
<b>Agenda Item Name:</b>	Bag limit and other sanitation topics
<b>Recommended By:</b>	Councilor Lowther
<b>Summary:</b>	The committee will discuss the possibility of instituting a bag limit for city trash collection.
<b>Fiscal Impact:</b>	The goal is to reduce/end the utilization of city sanitation services by individuals who have not paid for same. Cost savings are yet to be determined.
<b>Recommendation:</b>	Discuss and consider recommendations for next steps.
<b>Attachments:</b>	None



## CITY OF ELKINS AGENDA ITEM REPORT

<b>Meeting Date:</b>	June 2, 2025
<b>Section:</b>	New business
<b>Category:</b>	Action Item
<b>Agenda Item Name:</b>	Council rules amendment
<b>Recommended By:</b>	City Clerk
<b>Summary:</b>	<p>The attached document shows tracked proposed changes to the Common Council Rules, including:</p> <ul style="list-style-type: none"> <li>• Inserting the Charter's section on meeting procedures</li> <li>• Clarifying that the rules apply to both council and committee meetings</li> <li>• Removing committee descriptions now included in the Charter</li> <li>• Clarifying that council has delegated to the mayor the authority to appoint members to the EPRC and Planning Commission (which is otherwise assigned to council in code)</li> <li>• Allowing any council member to docket agenda items, reflecting current practice, instead of requiring agreement by three members</li> <li>• Adding the HR Director to the list of officials authorized to docket items</li> <li>• Providing more detailed procedures for citizens requesting agenda items, including allowing the Rules &amp; Ordinances Committee to set requirements for proposals to add or amend laws</li> <li>• Clarifying that motions are not needed to correct typos or immaterial errors in minutes</li> <li>• Explaining the distinction between a simple abstention and a recusal under the Ethics Act</li> <li>• Requiring the Chair to recess the meeting when expelling a disruptive individual, supporting prosecution under state law</li> </ul>
<b>Fiscal Impact:</b>	n/a
<b>Recommendation:</b>	Consider for approval
<b>Attachments:</b>	1. Council Rules approved 2024_06_06 - review_v2

# City of Elkins

## Rules of Procedure for Council and Its Committees

**Amended: June 6, 2024**

### Rule Titles

#### Table of Contents

1. Meetings.....	1
2. Open to public; exceptions.....	2
3. Committees .....	2
4. Agenda Items and Informational Packets .....	3
5. Order of business at regular meetings.....	4
6. Reading of the minutes.....	4
7. Procedures for enacting ordinances .....	4
8. Informational presentations.....	4
9. Reports .....	4
10. Recusal and Abstention .....	5
11. Executive session.....	5
12. Rescission, amendment, and suspension of rules .....	5
13. Discussion, debate, and voting .....	5
14. Parliamentary rules of order .....	6
15. Members of the public speaking before city council.....	6
16. Expulsion .....	6
City of Elkins .....	1
Rules of Procedure for Council and Its Committees .....	1
Amended: June 6, 2024.....	1
Rule Titles.....	1
1. Meetings.....	1
2. Committees .....	2
3. Agenda Items and Informational Packets .....	3
4. Order of business at regular meetings.....	4
5. Reading of the minutes.....	5
6. Procedures for enacting ordinances .....	5
7. Informational presentations.....	5

8. Reports .....	5
9. Recusal and Abstention .....	5
10. Executive session .....	6
11. Rescission, amendment, and suspension of rules .....	6
12. Discussion, debate, and voting .....	6
13. Parliamentary rules of order .....	6
14. Members of the public speaking before city council .....	6
15. Expulsion .....	7

This document contains the meeting, agenda, and other rules of procedure for the Elkins Common Council and its standing and ad-hoc committees. Wherever practicable, for the purpose of applying these rules to council committees, the term “council” shall be considered equivalent to “committee.”

**1. Meetings**

Meetings of the council and its committees shall be in compliance with Elkins Code § 31.02, which is reprinted below.

- a) Regular meetings. There shall be a regular meeting of the Council on the first and third Thursday of each month, at 7:00 p.m.; provided that Council may elect to meet at other times and may otherwise approve temporary changes to this schedule from time to time.
- b) Special meetings. There may be a special meeting of the Council held at any time fixed by the Council.
- c) Special called meetings. There may be special-called meetings of the Council at any time fixed by the Mayor or by any three members of the Council. Notification of the time, date, location and agenda of any special-called meeting shall be provided in the same manner as for regular meetings, provided that, in the event that the usual notification methods are judged insufficient, every reasonable effort will be made using alternate methods to ensure timely notification. Except under unusual circumstances, all members of staff who customarily attend regular meetings shall be notified of any special-called meeting in the same way that members of Council are notified.
- d) Place of meetings. All meetings of the Council shall be held in the Council Chamber at City Hall; provided, that the Council may designate another place, open to the public and within the city when, in the opinion of a majority of the members, the Council Chambers would not be adequate to accommodate the number of persons expected to be present for a meeting, or when, for other good reason, the Council Chamber is not deemed suitable.
- e) Remote meetings. Council may elect to meet using telephonic or electronic tools and may under special circumstances elect to allow members to join otherwise in-person meetings

using such tools, provided that the use of these tools must otherwise comply with all applicable requirements of city and state code, especially including requirements concerning access by members of the public.

## **2. Open to public; exceptions.**

~~1.~~ All meetings of the Council shall be open to orderly members of the public; provided, that the Council may, during any meeting, elect to enter executive session, as provided by W.Va. Code § 6-9A-4; at which time, the Council may exclude from attendance any nonmembers whose presence is not necessary for the consideration of the subject being considered in executive session; and provided further, that no final decision shall be made or vote or action taken upon any matter until the meeting has been reopened to the public. **The city council shall meet in regular public session at the council chamber in the city hall building at 7:00 p.m. on the first and third Thursdays of each month.**

- ~~a) Special meetings shall be held upon the written petition of two or more members of council or the call of the mayor.~~
- ~~b) If the city council shall determine that the council chamber in the city building is not or will not, for any reason, be an appropriate place for the holding of a meeting, the council may, upon motion, designate another place open to the public within the city for the holding of such meeting.~~
- ~~c) During an emergency situation or a declared state of emergency the mayor may change the location of the meeting and/or permit meetings to be held telephonically or via live audio or visual stream, so long as they continue to meet the minimum standards of the W.V. Open Meetings Act as interpreted by the W.V Ethics Commission.~~

## **2.3. Committees**

~~•~~ The As per the Elkins Charter, there shall be standing committees of Council comprised of members of Council appointed by the Mayor and governed by rules adopted by Council. The Mayor shall appoint Chairs of the standing committees whose work will be supported by appropriate members of the City Staff. The standing committees shall include no fewer than three (3) and no more than five (5) Councilors. city council shall have the following standing committees ~~All standing committees shall consist of no fewer than three and no more than five councilors. All standing committees shall be appointed by the mayor.~~ Council's five standing committees are as follows:

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- Finance Committee
- Rules & Ordinances Committee
- Municipal Properties Committee
- Personnel Committee

- Public Safety Committee
  - 1.—~~Committee on finance: recommends an annual budget to council. Supervises budget management and makes reports to council; reviews and proposes to council municipal dept instruments and grants; makes fiscal forecasts and reports the same to council.~~
  - 2.—~~Committee on rules and ordinances: considers and proposes to council new and amended ordinances, rules, and policies.~~
  - 3.—~~Committee on municipal properties: monitors and reports to council on the condition of and proposed plans for city buildings, real estate, and rights-of-way; reviews and proposes to council capital investment in buildings, real estate and associated infrastructure.~~
  - 4.—~~Committee on personnel: reviews and proposes to council employment policies, including employee compensation and benefits and an employee handbook; reviews applications for primary staff positions recommended by the mayor and makes hiring recommendations to council.~~
  - 5.—~~Committee on public safety: monitors and reports to council on the activities of, condition of and proposed plans for municipal public safety assets, including police, fire, and emergency services; reviews and proposed to council capital investment in public safety equipment and infrastructure.~~
- ~~All standing committees shall consist of no fewer than three and no more than five councilors. All standing committees shall be appointed by the mayor.~~
- In addition to the foregoing standing committees, there may be one or more ad-hoc committees assigned a mission or missions by council or the mayor. All members of such committees shall be appointed by the mayor.
- Through adoption of these rules, council delegates to tThe mayor ~~shall also~~the authority to appoint one council representative to the Elkins Parks and Recreation Commission and one council representative to the Elkins Planning Commission.

### 3.4. **Agenda Items and Informational Packets**

To promote the orderly conduct of the business of the city council and the timely preparation of an accurate agenda with complete supporting documents, the following rules are hereby established and applicable to the conduct of city council and council committee meetings:

- a) Council meeting agenda items may be submitted for docketing to the city clerk by the mayor, by ~~a committee chair, by any three members~~any member of council, or by any administrative officer or the HR Director. Agenda items may not be removed from the agenda without council action or the permission of the individual or body who submitted the initial request.

- b) Committee meeting agenda items may be submitted for docketing to the clerk of the committee by the mayor, any member of the committee or by any administrative officer or the HR Director. Agenda items may not be removed from the agenda without committee action or the permission of the individual or body who submitted the initial request.
- c) Items may be provided for inclusion in the council or committee informational packets by the mayor, any member of council, or any administrative officer; such items may not be removed without the permission of the person who submitted the item.
- d) By law, agendas must be posted no later than three business days before a meeting. Therefore, every effort should be made to submit agenda items to the clerk no later than 12:00 p.m. on the fourth business day preceding a council or committee meeting (keeping in mind weekends and interceding holidays). Because council members' informational packets are prepared on the second business day before a council or committee meeting, every effort should be made to submit supporting documentation for agenda items (such as agenda items reports, invoices, explanatory correspondence, etc.) no later than 12:00 p.m. the second business day preceding the council or committee meeting.
- e) The city clerk or city attorney will prepare and/or approve the final form of resolutions; the city attorney will prepare and must approve the final form of ordinances. The city clerk shall assign a number to each ordinance and resolution introduced and shall have authority to edit and correct resolutions as to form.
- f) To ensure that items docketed on the council agenda are as ripe for consideration and action as possible, the standard practice shall be to bring matters to the attention of the relevant council committee prior to laying them before full council. Members of the public wishing to address council on such matters prior to or in the absence of a committee referral shall request to address council during the Public Comment portion of the council agenda. The The city clerk, in consultation with the relevant committee(s) and/or other city staff, shall advise and support anyone needing assistance in navigating this process. Members of the public wishing to propose new or amend existing laws shall be required to make application to the Rules & Ordinances Committee prior to consideration by council, following procedures established by that committee from time to time.

#### **4.5. Order of business at regular meetings**

- a) The order of business for each meeting shall be ~~determined by the clerk~~ as described on the published agenda. The presiding officer, being the mayor, mayor designee, or chair, shall abide by the order of business as presented in the duly posted meeting agenda.
- b) The presiding officer may, by publicly stated reason and with unanimous consent of the body, change the order of business irrespective of ~~the order as set forth in~~ subsection (a).
- c) All meeting agenda items must be considered at that meeting. Agenda items may be withdrawn, postponed, or otherwise disposed only by a duly approved motion. If a member requests that an agenda item be considered in executive session, as permitted by W.V. Code §6-9A-4, said request

shall be made by motion. The motion must state the grounds for convening an executive session and an executive session may be held only upon a majority affirmative vote of the members present. All members of the body are permitted to be included in any executive session. Other elected officials, staff, citizens, or attendees may be included in the executive session at the request of the member making the motion.

#### **5.6. Reading of the minutes**

Members are provided copies of the minutes in advance of the meeting at which they will be considered for approval; because members have the opportunity to review minutes beforehand, minutes are not typically read at the meeting. ~~M. Upon motion, duly approved, the minutes may be materially amended and/or adopted. (The correction of immaterial errors and omissions shall not require a motion.)~~

~~Upon motion, duly approved, the minutes may be amended and adopted, including any submitted alternations or corrections.~~

#### **6.7. Procedures for enacting ordinances**

All ordinances shall be acted upon by Council in accordance with the City Code and the West Virginia Code.

#### **7.8. Informational presentations**

Council or the mayor may request or permit an informational presentation by anyone presenting business pertinent to the city. No substantial deliberation or action shall be taken in response to a presentation unless the item is otherwise listed ~~in the order of business~~ as a New or Unfinished Business item.

#### **8.9. Reports**

All reports of committees shall be delivered by the committee chair when requested by the mayor during the regularly scheduled Council meetings. In the absence of the chair another committee member may be called upon to report.

Staff reports shall be delivered by ~~the~~ administrative officers, or their designees. When appropriate the chief water operator, chief wastewater operator, other city staff, ~~or and~~ representatives of the city's boards and commissions may be called upon by council or committee to report.

#### **9.10. ~~When a member abstains from voting~~ Recusal and Abstention**

It is generally the duty of each council member to vote on all matters before the council. Any member abstaining from any vote shall clearly state the reason for their abstention, and the clerk shall record the reason in the meeting minutes.

In certain circumstances, recusal (which differs in this context from simple abstention) is required by law. The West Virginia Ethics Act prohibits public officials from voting on a matter in which they, or an immediate family member, have a financial interest, or on a matter involving a business with which the public official or an immediate family member is associated.

To comply with the Ethics Act concerning recusal in such instances, any affected officials must, first, fully disclose the nature of their interest for recording in the meeting minutes and, second, physically remove themselves from the room during the discussion and vote. Members are encouraged to familiarize themselves with the requirements of the West Virginia Ethics Act, as compliance is the responsibility of each individual official.

~~No member shall vote on any question before the city council if they are directly and immediately interested therein other than as a citizen of the City of Elkins; however, no member may abstain from voting without, prior to a vote being taken, having stated their reason for not voting.~~

#### **10.11. Executive session**

Rules regulating the application and confidentiality of executive session during council and committee meetings shall be adopted separately and titled *City Council Rule on Executive Session*. They shall appear as an addendum to the adopted City of Elkins Rules of Council.

#### **11.12. Rescission, amendment, and suspension of rules**

No standing order or rule of the city council shall be rescinded or amended except by a majority vote of the members elected to the city council.

#### **12.13. Discussion, debate, and voting**

- a) Agenda business items must be moved before being debated or discussed. A second to the motion is not required. At ~~their~~ his or her discretion, the chair may propose action on an item by unanimous consent.
- b) Items not appearing on the agenda may not be substantively discussed.
- c) The mayor or acting chair may participate in debates and discussions without relinquishing the chairmanship.
- d) Members need not rise to speak. Members must be recognized by the chair before obtaining the floor, but the chair must recognize any member who seeks the floor while entitled to it.
- e) No one except council members and the chair may participate in or contribute to discussion and debate unless recognized by ~~a member or~~ the chair in due order.
- f) The standard method of voting will be by voice. The chair will first ask all those in favor of a motion to say “aye,” and they will next ask all those opposing a motion to say “nay.” ~~If the result of the voice vote is not unanimous, the chair or any member shall~~ The chair, any member, or the city clerk may request a roll-call vote.

#### **13.14. Parliamentary rules of order**

For circumstances not described in these rules, refer to *Robert’s Rules of Order, Newly Revised*, a copy of which shall remain on file in the office of the city clerk.

## **14.15. Members of the public speaking before city council**

‡) ~~Per~~ Members of the public speaking before city council shall comply with Elkins City Code Chapter 31.05, ~~rev~~which is reprinted below.:

- a) Privilege of citizens and taxpayers to be heard; limitation on time to speak. Any citizen or taxpayer of the City may be heard either in person or by counsel upon any matter introduced or pending before the Common Council; but no speech or hearing shall exceed five minutes, except by the unanimous consent of the Council. If a citizen or taxpayer of the City requests to be heard either in person or by counsel upon any matter which is not introduced or pending before the Common Council, said citizen or taxpayer of the City may be permitted to address Council upon unanimous consent of the Council. Said speech or hearing shall not exceed five minutes, except again by unanimous consent of the Council.
- b) Citizens or counsel to speak only once on one subject at any one meeting. No citizen or taxpayer of the City or his counsel shall speak more than once on one subject at any one meeting of the Common Council, except by unanimous consent.
- c) Manner of addressing Council. Any person, before addressing the Council, shall rise to his feet, respectfully address the presiding officer, and remain standing while delivering his address. The person addressing Council shall state his name and address, and if the person represents a group or is speaking on behalf of someone other than himself.
- d) Order of recognition. If two or more persons desire to address the Common Council at the same time, the presiding officer shall recognize the person who first addressed the chair, and the other person shall at once be seated.
- e) Acknowledgment. The mayor or the presiding officer of the meeting shall acknowledge the person addressing the Common Council. The mayor or the presiding officer may request that the matter being addressed in the public comment be referred to the appropriate Council committee.

## **15.16. Expulsion**

If a citizen, council member, official, or any other person in attendance at a council meeting becomes unruly, the chair will, by gavel, advise such person that they are out of order and must cease and desist whatever speech or other actions that the chair deems unruly. If the unruly actions continue after such censure, the chair shall recess the meeting and direct the chief of police or his representative to remove such person or persons.



## CITY OF ELKINS AGENDA ITEM REPORT

<b>Meeting Date:</b>	June 2, 2025
<b>Section:</b>	New business
<b>Category:</b>	Action Item
<b>Agenda Item Name:</b>	Amending §110.055 of the City of Elkins Municipal Business and Occupation Tax Ordinance to Incorporate a De Minimis Exemption for Certain Small Businesses and Independent Contractors in Accordance with HB 2451
<b>Recommended By:</b>	
<b>Summary:</b>	<p>The City Attorney is preparing a proposed ordinance to implement the provisions of HB 2451, which introduces a de minimis exemption for certain small businesses and independent contractors. This ordinance will amend the City of Elkins Municipal Business and Occupation Tax Ordinance (E.M.C. §110.055 et seq.) to bring it into compliance with the new state requirements. The item is being placed on the agenda for preliminary discussion, although final language will not be complete in time for inclusion in this packet.</p> <p>The following supporting documents are attached:</p> <ul style="list-style-type: none"> <li>• A copy of HB 2451</li> <li>• A draft ordinance developed by the West Virginia Municipal Attorneys Association (noting that the sample refers to Barboursville, as it was prepared by legal counsel serving both Barboursville and the WV Municipal League)</li> <li>• The current section of the City Code to be amended</li> <li>• A model ordinance provided by the Municipal League</li> </ul> <p>Although the rationale for the bill is unclear, the proposed ordinance must be in effect by July 1, 2025. Following committee recommendation, it will need to appear on the agendas for both June City Council meetings to meet the statutory deadline. There will be time at the upcoming Monday committee meeting to review and discuss the proposal and make any necessary revisions prior to Council consideration on June 12.</p>
<b>Fiscal Impact:</b>	The change would eliminate Business & Occupation Taxes for home-based businesses with revenues less than \$2,500/year.



## CITY OF ELKINS AGENDA ITEM REPORT

<b>Recommendation:</b>	Consider for recommendation to council
<b>Attachments:</b>	<ol style="list-style-type: none"><li>1. hb2451 sub enr</li><li>2. barboursville example</li><li>3. elkinswv-wv-1 (71)</li><li>4. Prototype Max Rates Ordinance (003)</li></ol>

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **ENROLLED**

#### **Committee Substitute**

**for**

#### **House Bill 2451**

BY DELEGATES HORNBY, HORST, CHIARELLI, WILLIS,

KYLE, GREEN, BROOKS, CROUSE, AND MAYNOR

[Passed April 12, 2025; in effect 90 days from passage

(July 11, 2025)]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new  
2 article, designated §8-40-1, §8-40-2, §8-40-3, §8-40-4, and §8-40-5; to further  
3 amend the code, by adding thereto to a new article designated §8-41-1 and §8-41-  
4 2 and to amend and reenact §8-13-4, §8-13-5, and §11-12-3 relating to small  
5 businesses; exempting independent contractors and sole proprietors from  
6 business licenses under certain requirements; establishing an amount of annual  
7 gross revenue for businesses to be exempt from business and occupation taxes  
8 and privilege taxes; facilitating the creation of home based businesses; providing  
9 for definitions; providing for permitted use; providing for reasonable regulations;  
10 providing for limited conditions; providing for review; providing for the amount of  
11 income before a business has to obtain a business license; creating the Small  
12 Business Protection Act; providing intent and legislative findings; and providing a  
13 short title.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 13. TAXATION AND FINANCE.**

#### **§8-13-4. Municipal license and tax thereon when state license required.**

1 (a) Whenever anything, for which a state license is required, is to be done within the  
2 corporate limits of any municipality, the governing body shall have plenary power and authority,  
3 unless prohibited by general law, to require a municipal license and for the use of the municipality  
4 to impose a reasonable tax which may not exceed the amount of the state license tax. Upon  
5 proper application for a municipal license and payment of the prescribed reasonable tax by any  
6 person who has a valid and subsisting state license, the municipal license shall be issued.

7 (b) Except where a business license tax or fee has been established by the West Virginia  
8 Code, the governing body of a municipality may, in lieu of the provisions of subsection (a), enact  
9 an ordinance creating an annual general municipal business license for anything which requires  
10 a state license that is done within the corporate limits of a municipality, the tax for which may not  
11 exceed 20 dollars.

12 (c) Notwithstanding any other provision of law to the contrary, no municipal license shall  
13 be required for an independent contractor or sole proprietor who earns less than \$2,500 in annual  
14 gross revenue and who does not maintain a permanent physical location within the municipality's  
15 city limits.

**§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax;  
exemptions; activity in two or more municipalities; administrative provisions.**

1 (a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for  
2 which the state imposed its annual business and occupation or privilege tax under §11-13-1 *et*  
3 *seq.* of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of  
4 any municipality, the governing body thereof shall have plenary power and authority, unless  
5 prohibited by general law, to impose a similar business and occupation tax thereon for the use of  
6 the municipality.

7 (2) Municipalities may impose a business and occupation or privilege tax upon every  
8 person engaging or continuing within the municipality in the business of aircraft repair,  
9 remodeling, maintenance, modification, and refurbishing services to any aircraft, or to an engine  
10 or other component part of any aircraft as a separate business activity.

11 (b) *Maximum tax rates.* — In no case shall the rate of the municipal business and  
12 occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state,  
13 exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, §11-13-  
14 2b, §11-13-2c, §11-13-2d, §11-13-2e, §11-13-2g, §11-13-2h, §11-13-2i, and §11-13-2j of this  
15 code, as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in

16 excess of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths  
17 of one percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate  
18 of municipal business and occupation or privilege tax on the activity described in subdivision (2),  
19 subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal  
20 business and occupation or privilege tax on the activity of a health maintenance organization  
21 holding a certificate of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not  
22 exceed one-half of one percent to be applied solely to that portion of gross income received from  
23 the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee  
24 programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.*  
25 of this code, and other federal programs, for health care items or services provided directly or  
26 indirectly by the health maintenance organization, that is expended for administrative expenses;  
27 and shall not exceed one half of one percent to be applied to the gross income received from  
28 enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state  
29 employee programs administered by the Public Employees Insurance Agency, and other federal  
30 programs for health care items or services provided directly or indirectly by the health  
31 maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of  
32 the gross income of health maintenance organizations which is received from the use of real  
33 property other than property in which any company maintains its office or offices in this state,  
34 whether the income is in the form of rentals or royalties. This provision concerning the maximum  
35 municipal business and occupation tax rate on the activities of health maintenance organizations  
36 is effective beginning after December 31, 1996. Any payments of business and occupation tax  
37 made by a health maintenance organization to a municipality for calendar year 1997 is not subject  
38 to recovery by the health maintenance organization. Administrative expenses shall include all  
39 expenditures made by a health maintenance organization other than expenses paid for claims  
40 incurred or payments made to providers for the benefits received by enrollees.

41           (c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section  
42 may be made operative as of the first day of the then current fiscal year or any date thereafter:  
43 *Provided,* That any new imposition of tax or any increase in the rate of tax upon any business,  
44 occupation or privilege taxed under §11-13-2e of this code, applies only to gross income derived  
45 from contracts entered into after the effective date of the imposition of tax or rate increase, and  
46 which effective date shall not be retroactive in any respect: *Provided, however,* That no tax  
47 imposed or revised under this section upon public utility services may be effective unless and until  
48 the municipality provides written notice of the same by certified mail to said public utility at least  
49 60 days prior to the effective date of said tax or revision thereof.

50           (d) *Exemptions.* —

51           (1) A municipality shall not impose its business and occupation or privilege tax on any  
52 activity that was exempt from the state’s business and occupation tax under the provisions of §11-  
53 13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly  
54 monetary exemption also specified therein: *Provided,* That on and after July 1, 2007, a  
55 municipality may impose its business and occupation or privilege tax on any activity of a  
56 corporation, association, or society organized and operated exclusively for religious or charitable  
57 purposes that was exempt from the state’s business and occupation tax under the provisions of  
58 §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by  
59 the activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of  
60 1986, as amended.

61           (2) A municipality shall not impose its business and occupation or privilege tax on any  
62 business with a gross revenue below \$2,500 annually.

63           (3) Effective July 1, 2023, the municipal business and occupation or privilege tax on the  
64 sale of new automobiles that have never been registered in the name of an individual shall be  
65 reduced by 50 percent of the total amount of the tax: *Provided,* That, effective July 1, 2024, the  
66 remaining municipal business and occupation or privilege tax on the sale of new automobiles that

67 have never been registered in the name of an individual shall be reduced by an additional 50  
68 percent of the total amount of the tax: *Provided, however,* That July 1, 2025, the municipal  
69 business and occupation or privilege tax on the sale of new automobiles that have never been  
70 registered in the name of an individual shall be completely eliminated. For the purposes of this  
71 section, an automobile is a self-propelled vehicle used on the roads and highways by the use of  
72 motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or  
73 a combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and  
74 an open loading area at the rear and a sport utility vehicle. An automobile does not include a  
75 motorcycle.

76 (e) *Activity in two or more municipalities.* — Whenever the business activity or occupation  
77 of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount  
78 of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in  
79 accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the  
80 Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the  
81 same classification by two or more municipalities shall not be allowed, and that gross income, or  
82 gross proceeds of sales, derived from activity engaged in or carried on within this state, that is  
83 presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or  
84 taxable by any other municipality of this state, may be included in the measure of tax for any  
85 municipality in this state, from which the activity was directed, or in the absence thereof, the  
86 municipality in this state in which the principal office of the taxpayer is located. Nothing in this  
87 subsection shall be construed as permitting any municipality to tax gross income or gross  
88 proceeds of sales in violation of the Constitution and laws of this state or the United States, or as  
89 permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

90 (f) Where the governing body of a municipality imposes a tax authorized by this section,  
91 the governing body may offer tax credits from the tax as incentives for new and expanding  
92 businesses located within the corporate limits of the municipality.

93           (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and  
94 occupation or privilege tax shall provide procedures for the assessment and collection of the tax,  
95 which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on  
96 June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with  
97 such provisions as they relate to waiver of penalties and additions to tax.

98           (h) *Timely payment.* — Payments for taxes due under this section that are postmarked  
99 after the due date by which they are owed shall be considered late and may be subject to late  
100 fees or penalties: *Provided,* That payments that are received by the municipality after the due  
101 date, but that were postmarked on or before the due date shall be considered to be on time and  
102 shall not be assessed any late fees or penalties.

103           (i) Any third-party vendors who contract with a city or municipality to collect business and  
104 occupation taxes authorized by this section on behalf of a municipality may not charge for their  
105 services more than 20% of the amount of taxes collected.

## **ARTICLE 40. HOME BASED BUSINESSES.**

### **§8-40-1. Definitions.**

1           (a) "Goods" means any merchandise, equipment, products, supplies, or materials.

2           (b) "Home-based business" means any business for the manufacture, provision, or sale  
3 of goods or services that is owned and operated by the owner or tenant of a residential dwelling  
4 where the commercial activity takes place inside a residential dwelling and the commercial  
5 activities:

6           (1) Are limited to the sale of lawful goods and services;

7           (2) Do not generate on-street parking or a substantial increase in traffic through the  
8 residential area; and

9           (3) Do not have signage visible from the street.

**§8-40-2. Permitted use.**

1 (a) The use of a residential dwelling for a home-based business is a permitted use, except  
2 that this permission does not supersede or abrogate any of the following:

- 3 (1) Any deed restriction, covenant, or agreement restricting the use of land; or  
4 (2) Any deed, by-law, or other document applicable to a common interest ownership  
5 community.

**§8-40-3. Reasonable regulations.**

1 (a) A municipality may establish reasonable regulations on a home-based business where  
2 the regulation is rationally related to a legitimate government interest including, but not limited to,  
3 any of the following purposes:

4 (1) The protection of the public health and safety, as defined in this code, including rules  
5 and regulations related to fire and building codes, health and sanitation, transportation, or traffic  
6 control, solid or hazardous waste, pollution, and noise control.

7 (2) Ensuring that the business activity is:

8 (A) Compatible with residential use of the property and surrounding residential use;

9 (B) Secondary to the use as a residential dwelling; or

10 (C) Complying with state and federal law and paying applicable taxes.

11 (3) Limiting or prohibiting the use of a home-based business that engages in any of the  
12 following activities:

13 (A) Selling illegal drugs or products containing alcohol or tobacco;

14 (B) Operating a sober living home;

15 (C) Selling pornography or otherwise obscene material;

16 (D) Operating a vape shop; or

17 (E) Operating a commercial establishment where nude or topless dancing occurs.

**§8-40-4. Limited conditions.**

1 (a) A municipality shall not require a person as a condition of operating a home-based  
2 business to:

3 (1) Rezone the property for commercial use;

4 (2) Install or equip fire sprinklers in a single-family detached residential dwelling or any  
5 residential dwelling with not more than two dwelling units; or

6 (3) Obtain a license or permit that is not otherwise required for a similarly situated  
7 business.

**§8-40-5. Review.**

1 In any proceeding alleging that a municipal regulation violates §8-40-3 or §8-40-4 of this  
2 code, the municipality that enacted the regulation shall be required to establish that the regulation  
3 complies with the provisions of this article.

**ARTICLE 41. SMALL BUSINESS PROTECTION ACT.**

**§8-41-1. Short title.**

1 This article may be cited as the Small Business Protection Act.

**§8-41-2. Intent and legislative findings.**

1 (a) It is the legislative intent and purpose of the Small Business Protection Act to improve  
2 state rulemaking by creating procedures to analyze the availability of more flexible regulatory  
3 approaches for small businesses.

4 (b) The legislature finds that:

5 (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic  
6 economy. Increased hiring in West Virginia's small businesses creates higher wages and better  
7 outcomes for West Virginia's citizens and families;

8 (2) Small businesses bear a disproportionate share of regulatory costs and burdens.  
9 Increased regulatory costs decrease the amount of capital that small businesses have to create  
10 new jobs;

11 (3) Fundamental changes that are needed in the regulatory and enforcement culture of  
12 state agencies to make them more responsive to small business can be made without  
13 compromising the statutory missions of the agencies;

14 (4) When adopting rules to protect the health, safety, and economic welfare of West  
15 Virginia, state agencies should seek to achieve statutory goals as effectively and efficiently as  
16 possible without imposing unnecessary burdens on small employers;

17 (5) Uniform regulatory and reporting requirements can impose unnecessary and  
18 disproportionately burdensome demands, including legal, accounting, and consulting costs upon  
19 small businesses with limited resources;

20 (6) The failure to recognize differences in the scale and resources of regulated businesses  
21 can adversely affect competition in the marketplace, discourage innovation, and restrict  
22 improvements in productivity;

23 (7) Unnecessary regulations create entry barriers in many industries and discourage  
24 potential entrepreneurs from introducing beneficial products and processes;

25 (8) The practice of treating all regulated businesses as equivalent may lead to inefficient  
26 use of regulatory agency resources, enforcement problems, and, in some cases, to actions  
27 inconsistent with the legislative intent of health, safety, environmental, and economic welfare  
28 legislation;

29 (9) Alternative regulatory approaches which do not conflict with the stated objective of  
30 applicable statutes may be available to minimize the significant economic impact of rules on small  
31 businesses;

32 (10) Prior to the adoption of regulations, the process by which state regulations are  
33 developed and adopted should be reformed to require agencies to solicit the ideas and comments

34 of small businesses, to examine the impact of proposed and existing rules on such businesses,  
35 and to review the continued need for existing rules;

36 (11) Regulations affect small businesses differently than their larger counterparts.  
37 According to the United States Small Business Administration, evidence indicates that regulatory  
38 requirements at the federal and state level tend to create disproportionately heavier burdens for  
39 small businesses, putting them at a disadvantage relative to their larger competitors. Reasons  
40 that small businesses are at a disadvantage include the following:

41 (A) The cost of regulations is higher relative to available resources. The cost of regulations  
42 per employee is higher for businesses with fewer employees; and

43 (B) The cost per employee for the smallest businesses is typically one or more times  
44 greater than the equivalent cost for the largest businesses.

45 (12) Making small businesses aware of proposed state regulations prior to implementation  
46 is key to creating an effective partnership between state agencies and small businesses.

47 (c) Nothing in the Small Business Protection Act shall be interpreted or construed to limit  
48 the ability of an agency to propose rules.

## CHAPTER 11. TAXATION.

### ARTICLE 12. BUSINESS REGISTRATION TAX.

#### §11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; penalty.

1 (a) *Registration required.* — No person shall, without a business registration certificate,  
2 engage in or prosecute, in the State of West Virginia, any business activity without first obtaining  
3 a business registration certificate from the Tax Commissioner of the State of West Virginia.  
4 Additionally, before beginning business in this state, such person:

5 (1) If a transient vendor, shall comply with the provisions of sections 20 through 25 of this  
6 article.

7 (2) If a collection agency, shall comply with the provisions of §47-16-1 *et seq.* of this code.

8 (3) If an employment agency, shall comply with the provisions of §21-2-1 *et seq.* of this  
9 code.

10 (4) If selling drug paraphernalia, as defined in §47-19-3 of this code, shall comply with the  
11 provisions of §47-19-1 *et seq.* of this code.

12 Persons engaging in or prosecuting other business activities in this state may also be  
13 subject to other provisions of this code which they must satisfy before commencing or while  
14 engaging in a business activity in this state.

15 (b) *Tax levied.* — The business registration tax hereby levied shall be \$15 for each annual  
16 business registration certificate: *Provided,* That for registration periods beginning on or after July  
17 1, 1999, the business registration tax shall be \$30, except as otherwise provided in this article:  
18 *Provided, however,* That after June 30, 2010, the business registration tax shall be \$30.00 for  
19 each business registration certificate, including business registration certificates granted upon  
20 application after cessation of a business, or after suspension, revocation, cancellation or lapse of  
21 a prior business registration certificate.

22 (1) A separate business registration certificate is required for each fixed business location  
23 from which property or services are offered for sale or lease to the public as a class, or to a limited  
24 portion of the public; or at which customer accounts may be opened, closed or serviced.

25 (2) A separate business registration certificate is not required for each coin-operated  
26 machine. A separate certificate is required for each location from which making coin-operated  
27 machines available to the public is itself a business activity.

28 (3) A business that sells tangible personal property or services from or out of one or more  
29 vehicles needs a separate business registration certificate for each fixed location in this state from  
30 or out of which business is conducted. A copy of its business registration certificate shall be  
31 carried in each vehicle and publicly displayed while business is conducted from or out of the  
32 vehicle.

33           (4) A business registration certificate is required by subsection (a) of this section for every  
34 person engaging in purposeful revenue generating activity in this state. If that activity is one for  
35 which an employment agency license or a collection agency license or a license to sell drug  
36 paraphernalia is required and no other business activity is conducted by that person at each  
37 business location for which the employment agency license or collection agency license or license  
38 to sell drug paraphernalia is issued, then only that license is required for each such activity  
39 conducted by the licensee at each business location. However, if, in addition to the activity for  
40 which each license is issued, some other business activity is conducted by the licensee at such  
41 business location, a separate business registration certificate is required to conduct the  
42 nonlicensed activity.

43           (c) *Exemption from registration.* — Any person engaging in or prosecuting business  
44 activity in this state:

45           (1) Who is not required by law to collect or withhold a tax administered under article ten of  
46 this chapter; and

47           (2) Who does not claim exemption from payment of taxes imposed by articles fifteen and  
48 fifteen-a of this chapter, shall be exempt from both registration and payment of the tax imposed  
49 by this article, if such person had gross income from business activity of \$4,000 or less during  
50 that person's tax year for state income tax purposes immediately preceding the registration period  
51 for which a registration certificate is otherwise required by this article.

52           (d) *Exemptions from payment of tax.* — Any person engaging in or prosecuting any  
53 business activity in this state who is required by law to collect or withhold any tax administered  
54 under article ten of this chapter; or who claims exemption from payment of the taxes imposed by  
55 articles fifteen and fifteen-a of this chapter, shall be required to obtain a business registration  
56 certificate, as herein before provided, but shall be exempt from payment of the tax levied by  
57 subsection (b) of this section, if such person is:

58 (1) A person who had gross income of \$10,000 or less during that person's tax year for  
59 state income tax purposes immediately preceding the registration period for which a registration  
60 certificate is required under this article.

61 (2) An organization which qualifies, or would qualify, for exemption from federal income  
62 taxes under section 501 of the Internal Revenue Code of 1986, as amended.

63 (3) This state, or a political subdivision thereof, selling tangible personal property,  
64 admissions or services, when those activities compete with or may compete with the activities of  
65 another person.

66 (4) The United States, or an agency or instrumentality thereof, which is exempt from  
67 taxation by the states.

68 (5) A person engaged in the business of agriculture and farming: *Provided*, That no  
69 producer or grower selling products of the farm, garden or dairy and not included within the  
70 definition of business under subsection (a), section two of this article shall be required to obtain a  
71 business registration certificate or pay the business registration tax.

72 (6) A foreign retailer who is not a "retailer engaging in business in this state" as defined in  
73 section one, article fifteen-a of this chapter, who enters into an agreement with the Tax  
74 Commissioner to voluntarily collect and remit use tax on sales to West Virginia customers.

75 (e) *Money penalty.* — Any person required to obtain a business registration certificate  
76 under this section, who is exempt from payment of the tax, as provided in subsection (d) of this  
77 section, who does not obtain a registration certificate shall, in lieu of paying the penalty imposed  
78 by section nine of this article, pay a penalty of \$15 for each business location for which a certificate  
79 is needed: *Provided*, That application for business registration is made and the applicable money  
80 penalty tendered to the Tax Commissioner within 15 days after such person receives written  
81 notice from the Tax Commissioner that such person is required to obtain a business registration  
82 certificate.



The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect 90 days from passage.

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

\_\_\_\_\_

The within is ..... this the.....  
Day of ....., 2025.

.....  
*Governor*

ARTICLE 737  
License Taxes

737.01 Definitions.

737.02 License required; fee levied.

737.03 Application; issuance; filing fee; stamps for coin-operated devices.

737.031 Fees for owning and operating coin-operated amusement devices or vending machines.

737.04 Prorating license fees.

737.05 Conditions precedent to doing business.

737.06 License co-extensive with Municipality; effect.

737.07 Term of licenses; minimum fee.

737.08 Exhibition of licenses.

737.09 License a personal privilege.

737.10 Effect of change in partners or name of firm.

737.11 Collection of license fees by distraint.

737.12 Collection of fees by action or suit.

737.13 Collection of back taxes.

737.14 Additional penalties when business is transacted without license.

737.15 Interpretation.

737.16 Fees.

737.17 LIMITED BUSINESS LICENSE EXEMPTION.

CROSS REFERENCES

Authority to tax - see W. Va. Code 8-13-4, 11-12-4

737.01 DEFINITIONS.

As used in this article:

(a) "Business, activity, trade or employment" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect, and includes but is not limited to, retail sales business, service businesses or callings, selling at wholesale or wholesale sales and contracting. "Business, activity, trade or employment" shall not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. "Business, activity, trade or employment" includes the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and includes the activities of a banking business or financial organization.

(b) "Banking business" or "financial organization" means any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent (90%) of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.

(c) "Service business or calling" includes all activities engaged in by a person for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible property, but shall not include the services rendered by an employee to his employer. "Service business or calling" includes, but is not limited to:

(1) Persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances or commodities which are owned by another or others;

(2) Persons engaged as independent contractors in producing natural resource products which are owned by another or others, as personal property, immediately after the same are severed, extracted, reduced to possession and produced;

(3) The repetitive carrying of accounts, in the regular course and conduct of business, and extension of credit in connection with a sale of any tangible personal property or service.

(d) "Selling at wholesale" or "wholesale sales" means:

(1) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property;

(2) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the fee imposed by this article or to the taxes imposed by West Virginia Code Chapter 11, as amended; and

(3) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the State, its institutions or political subdivisions.

(Ord. 88-06. Passed 6-7-88.)

(e) "Contractor" means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or

to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars (\$1,000) or more.

"Contractor" includes a construction manager who performs management and counseling services for a construction project for a professional fee.

"Contractor" does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work; or

(4) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in subsection (c) hereof and who employs full-time a registered architect licensed to practice in this State or a registered professional engineer licensed to practice in this State. Employees of such corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article.

(f) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy.

(g) "General building contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattel or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole or any part of such construction.

(h) "General engineering contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: irrigation, drainage and water supply projects; electrical generation projects; swimming pools, flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundation; structures or work incidental thereto.

(i) "Heating, ventilating and cooling contractor" means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating and air conditioning equipment or systems to heat, cool or ventilate residential and commercial structures.

(j) "Multifamily contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure.

(k) "Piping contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods.

(l) "Plumbing contractor" means a person whose principal business is the installation, maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, and piping for stand pipes.

(m) "Residential contractor" means a person whose principal business is in connection with construction, repair or improvement of real property used as, or intended to be used for, residential occupancy.

(n) "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.

(m) "Independent contractor", for the purposes of Section 737.17 only, means a natural person who provides labor, services, or materials to another for compensation and:

(1) Is not treated as an employee for purposes of federal income tax withholding;

(2) Is issued an Internal Revenue Service Form 1099 for such services; and

(3) Retains control over the manner and means of performing the work, consistent with Internal Revenue Service guidance and common law agency principles.

(n) "Annual gross revenue", for purposes of Section 737.17 only, means the total gross receipts or gross income actually received by the person from all business activity carried on within the corporate limits of the Village during the calendar year preceding the license year. The term includes income received in cash or in-kind and without reduction for expenses or cost of goods sold.

[o] "Permanent physical location" means any fixed place of business within the corporate limits of the Village of Barboursville at which the person regularly conducts business, including but not limited to a commercial office, retail store, warehouse, workshop, or dedicated space within a residence.

The term does not include temporary job sites, incidental use of public spaces, or occasional in-person meetings, nor does it include a postal mailing address or third-party drop location unless business activity is regularly conducted there.

(Ord. 91-05. Passed 8-20-91.)

737.02 LICENSE REQUIRED; FEE LEVIED.

No person shall, without a license, engage in or prosecute, within the Municipality any of the businesses, activities, trades or employments named in the following sections of this article. The license tax hereinafter specified is hereby levied on every person engaging in or prosecuting, within this Municipality any such businesses, activities, trades or employments, **provided, however, effective July 1, 2025, that a person qualifying under Section 737.17 shall not be required to obtain such license.**

(Ord. 88-06. Passed 6-7-88.)

737.03 APPLICATIONS; ISSUANCE; FILING FEE; STAMPS FOR COIN-OPERATED DEVICES.

The licenses provided for in this article shall be issued in the form of certificates by the Director of Finance to any person making proper application therefor on forms to be prescribed and furnished by the Director and tendering the license fee for each license certificate requested.

In addition to the required license certificate, there shall be required and issued at the time of the issuance of such certificate to the person owning coin-operated devices a decalomania stamp or other evidence of such license certificate for each coin-operated device licensed by such certificate.

The Director of Finance shall collect, in full, the proper fee and determine to his satisfaction that all the conditions precedent to the granting of such license have been fulfilled by the applicant before issuing a certificate of license.

(Ord. 88-06. Passed 6-7-88.)

737.031 FEES FOR OWNING AND OPERATING COIN-OPERATED AMUSEMENT DEVICES OR VENDING MACHINES.

(a) Persons owning and operating coin-operated merchandise, service amusement or music devices or vending machines shall obtain annual licenses and pay the fees prescribed in this section.

(b) The liability for the license to operate any type of coin-operated merchandise, service amusement or music devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the applicable county clerk's office. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees.

(c) The annual license fee to own and operate a coin-operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character shall

be fifty cents (\$0.50) for each section of any such device which is operated on the coin-in-the-slot principle.

(d) The annual license fee to own and operate any coin-operated toilet locker or device, sanitary napkin device or bed vibrator device shall be fifty cents (\$0.50) for every such locker or device.

(e) The annual license fee to own and operate any coin-operated amusement or music devices, shall be as follows:

(1) Where a person owns fewer than twenty such devices, the fee for each device is:

For one-cent devices	\$2.00
For five-cent devices	5.00
For ten-cent devices	10.00
For devices requiring more than ten cents	12.50

(2) Where a person owns and operates twenty or more such devices the aggregate fee to the owner is:

For one-cent devices	\$ 50.00
For five-cent devices	100.00
For ten-cent devices	150.00
For devices requiring more than ten cents	250.00

The operator of more than one type of device shall pay the highest fee prescribed.

(3) Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of coins necessary to make the device function.

(f) The annual license fee to own and operate coin-operated merchandise or service devices shall be as follows:

(1) Where a person owns and operates fewer than twenty such devices, the fee for such device is:

For one-cent devices	\$2.00
For five-cent devices	5.00
For ten-cent devices	10.00

For devices requiring more than ten cents 12.50

(2) Where a person owns and operates twenty or more such devices the aggregate annual fee to the owner is:

For one-cent devices	\$ 50.00
For five-cent devices	100.00
For ten-cent devices	150.00
For devices requiring more than ten cents	250.00

The operator of more than one type of device shall pay the highest fee prescribed.

(3) Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of coins necessary to make the device function.

(g) No license fee shall be required of stores or businesses owning and operating machines or devices described in this section and owned by them in their own licensed stores. Provided however, that where the principal business is the operation of the machines or devices, then the licenses shall be obtained as outlined above.

(h) The provisions of this section shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in -the-slot principle.

(Ord. 98-02. Passed 3-17-98.)

#### 737.04 PRORATING LICENSE FEES.

Every license issued prior to January 1 of any year, under the provisions of this article, shall be charged for at the full rate. Every license issued on and after January 1 of any year shall be charged for at one-half on the full rate; provided, that the foregoing provisions shall not apply where otherwise specifically provided.

(Ord. 88-06. Passed 6-7-88.)

#### 737.05 CONDITIONS PRECEDENT TO DOING BUSINESS.

Payment in full of the proper fee, as specified in this article, the issuance of a certificate of license and the fulfillment of all terms and conditions of such grants shall be conditions precedent to the transaction of any businesses, activity, trade or employment for which a license is required by this article.

(Ord. 88-06 Passed 6-7-88.)

737.06 LICENSE CO-EXTENSIVE WITH MUNICIPALITY; EFFECT.

(a) License Co-extensive. Except as otherwise expressly provided, licenses issued pursuant to this article shall be co-extensive with the Municipality.

(b) Effect. Nothing in this article and no payment or issuance of any certificate of license under the provisions of this article shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any persons from any penalty prescribed for such violation.

(Ord. 88-06. Passed 6-7-88.)

737.07 TERM OF LICENSES; MINIMUM FEE.

Except as may be otherwise expressly provided, all annual licenses issued under the provisions of this article shall be for a period of one year, beginning on July 1 and ending on the following June 30; provided, that no license for any purpose for any length of time shall be issued for less than two dollars (\$2.00).

(Ord. 88-06. Passed 6-7-88.)

737.08 EXHIBITION OF LICENSES.

Every person to whom a certificate of license shall be issued under the provisions of this article shall keep such certificate posted in a conspicuous position in the place where the privileges are exercised, except as otherwise specifically provided in this article. Such certificate of license shall be produced for inspection whenever required by the Director of Finance or his agents.

(Ord. 88-06. Passed 6-7-88.)

737.09 LICENSE A PERSONAL PRIVILEGE.

Every license issued under the provisions of this article shall confer a personal privilege only to transact the business, activity, trade or employment which may be the subject of a license and shall not be exercised except by the person holding the same and shall not be assignable.

(Ord. 88-06. Passed 6-7-88.)

737.10 EFFECT OF CHANGE IN PARTNERS OR NAME OF FIRM.

No changes in the name of the firm, nor the taking in of one or more new partners, nor the withdrawal of one or more members of the firm, so long as at least one member remains the same, shall be considered as terminating the privileges of any license granted to such partners or firm.

(Ord. 88-06. Passed 6-7-88.)

#### 737.11 COLLECTION OF LICENSE FEES BY DISTRAINT.

The Director of Finance or his agents may distrain any personal property, including intangibles, of any person delinquent in the payment of fees and penalties accrued and unpaid under the provisions of this article.

(Ord. 88-06. Passed 6-7-88.)

#### 737.12 COLLECTION OF FEES BY ACTION OR SUIT.

The Director of Finance may collect any license tax fee or penalty unpaid under the provisions of this article by action in debt, motion for judgment or other appropriate proceeding including suit in a court of appropriate jurisdiction.

(Ord. 88-06. Passed 6-7-88.)

#### 737.13 COLLECTION OF BACK TAXES.

Any person engaging in or prosecuting any business, activity, trade or employment contrary to the provisions of this article, whether without obtaining a license therefor before commencing the same or by continuing the same after the termination of the effective period of any such license, shall in addition to all other penalties for violation of this article, be liable for the payment of all back taxes and penalties for a period not exceeding five years.

(Ord. 88-06. Passed 6-7-88.)

#### 737.14 ADDITIONAL PENALTIES WHEN BUSINESS IS TRANSACTED WITHOUT LICENSE.

Any person engaging in or prosecuting any business, activity, trade or employment contrary to the provisions of this article, whether without obtaining a license therefor before commencing the same or by continuing the same after the termination of the effective period of any such license, shall, in addition to paying the license tax, be liable to the following penalties:

(a) If the license tax to which he is subject is an annual one, or for a period of one month or more, a five hundred dollar (\$500.00) fine will be assessed against said business.

(b) If a license tax is for any period less than one month, the aforementioned penalty applies.

The Director of Finance shall have plenary power to collect the full amount of the license and penalty therefor.

(Ord. 2003-05. Passed 11-4-03.)

#### 737.15 INTERPRETATION.

None of the provisions of this article shall affect any of the laws of this State or of this Municipality dealing with corporations, land-holding or charter taxes, unless specifically so provided.

(Ord. 88-06. Passed 6-7-88.)

#### 737.16 FEES.

Any person engaging in or prosecuting, within the Municipality, any of the businesses, activities, trades or employments defined in this article, shall obtain an annual license and pay the annual license fee, of five dollars (\$5.00), on or before July 1 of each year.

(Ord. 88-06. Passed 6-7-88.)

#### 737.17 LIMITED BUSINESS LICENSE EXEMPTION.

(a) Exemption Established. Notwithstanding any other provision of this Article, effective July 1, 2025 no municipal business license shall be required for a person who:

- (1) Operates as an independent contractor or sole proprietor;
- (2) Has no permanent physical location within the corporate limits of the Village; and
- (3) Earns less than two thousand five hundred dollars (\$2,500.00) in annual gross revenue from business conducted within the Village during the license year.

(b) Substantiation.

(1) Persons claiming this exemption shall, upon request by the Finance Director, provide documentation sufficient to demonstrate qualification under this section.

(2) Acceptable documentation may include IRS Form 1099s, tax returns, accounting summaries, or affidavits.

(c) Non-Waiver of Other Obligations. This exemption does not relieve any person from obligations under other federal, state, or local tax or regulatory regimes, including fees or building permits, nor does it exempt such person from payment of business and occupation taxes, if otherwise due.

(d) Regulatory Authority. The Finance Director may adopt reasonable rules and forms necessary for the administration of this exemption.

## BUSINESS AND OCCUPATION TAX

### § 110.055 SHORT TITLE.

This subchapter shall be known as the “City of Elkins Municipal Business and Occupation Tax Ordinance”.  
(1991 Code, § 6-15) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **Statutory reference:**

*Authority of city to impose business and occupation tax on businesses and occupations taxed by state, see W.Va. Code § 8-13-5, as modified by W.Va. Code § 11-13-25*

*State business and occupation tax, see W.Va. Code Ch. 11, Art. 13*

### § 110.056 PURPOSE AND INTENT.

The purpose of this subchapter is to impose a municipal business and occupation tax pursuant to W.Va. Code § 8-13-5 to the fullest extent allowable under the operative laws of the state and the United States unless a more restrictive application is required by an express limitation set forth in this subchapter.

(1991 Code, § 6-16) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

### § 110.057 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BANKING BUSINESS or FINANCIAL ORGANIZATION.** Any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, credit union, finance company, investment company, investment broker or dealer, and any other similar business organization at least 90% of the assets of which consists of intangible personal property and at least 90% of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.

**BUSINESS.** All activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. The production of raw materials or manufactured products which are used or consumed in the main business shall be deemed a **BUSINESS** engaged in taxable in the class for which it falls.

**CONTRACTING.** The furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

**GROSS INCOME.** The gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property, real or personal, or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest and discount paid, or sums paid to independent contractors, subcontractors or persons furnished services or property used in the operation of any business to produce gross income, or any other expense whatsoever. **GROSS INCOME** of a banking or financial business is specified in § 110.066.

**GROSS PROCEEDS OF SALES.** The value actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The words gross income and **GROSS PROCEEDS OF SALES** shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded, either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the gross income or **GROSS PROCEEDS OF SALES**; excise taxes imposed by the state; money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for repayment of a debt of another; and excise taxes imposed by the federal government upon the consumer, not manufacturer, and which are held in trust by the vendor as agent for the federal government.

**MUNICIPALITY.** The City of Elkins.

**PERSON and COMPANY.** The terms are used interchangeably in this subchapter and mean and include any individual, firm, copartnership, joint adventure, association, corporation, limited liability company, trust, estate or any other group or combination acting as a unit, and the plural as well as the singular number. The word **IT** shall also include the pronouns “he” and “she”.

**RETAIL SALES and SELLING AT RETAIL.** All sales other than wholesale sales, including, but not limited to, sales to persons for use in any activity not subject to the tax imposed by this subchapter, all sales of real property, and sales to consumers.

**SALE and SALES.** Any transfer of the ownership of or title to property, whether for money or in exchange for other

property.

**SERVICES or SERVICE BUSINESS OR CALLING.** Includes all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the services rendered by an employee to his or her employer.

**TAX YEAR and TAXABLE YEAR.** Either the calendar year or the taxpayer's fiscal year when permission is obtained in writing from the Treasurer to use such fiscal year in lieu of the calendar year.

**TAXPAYER.** Any person liable for any tax hereunder.

**TREASURER.** The municipality's Treasurer and his or her agents, delegates or representatives.

**WHOLESALE SALES and SELLING AT WHOLESALE.** Only:

- (1) Sales of tangible personal property for the purpose of resale in the form of tangible personal property;
- (2) Sales of machinery, supplies or materials which are to be directly consumed by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this subchapter; or
- (3) Sales of tangible personal property to the United States of America, its agencies and instrumentalities, or to the state, its institutions and political subdivisions.

(1991 Code, § 6-17) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

### **§ 110.058 IMPOSITION OF TAX.**

(A) There are hereby levied and imposed and shall be collected annual privilege taxes, against the persons, on account of the business and other activities and in the amounts to be determined by the application of rates against values or gross income or gross proceeds as set forth in §§ 110.059 through 110.067, inclusive.

(B) If any person liable for any tax under § 110.059 shall ship or transport its products, or any part thereof, out of the municipality without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the municipality shall be the basis for the assessment of the tax imposed in those sections. Gross income included in the measure of the tax under § 110.059 shall neither be added nor deducted in computing the tax levied under the other sections of this subchapter. In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and the seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the value upon which such privilege tax shall be levied shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and the seller but where the circumstances or conditions are otherwise similar.

(C) The municipal business and occupation tax is imposed on each person engaged in privileges taxable under this subchapter if such person is engaged in purposive revenue generating activities within the municipality's limits and such person has sufficient contacts to sustain the municipality's taxing jurisdiction. By way of example (but not limitation), if a person's activities within the municipality contributes to the establishment and maintenance of a market, such contacts are considered to be sufficient to sustain the municipality's taxing jurisdiction assuming federal constitutional nexus standards are satisfied.

(1991 Code, § 6-18) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

### **§ 110.059 NATURAL RESOURCE PRODUCTION.**

(A) (1) Upon every person engaging or continuing within the municipality in the business of severing, extracting, mining, quarrying, reducing to possession and/or producing for sale, profit or commercial use any natural resource products, the amount of such tax shall be equal of the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as hereinafter provided, multiplied by the respective rates as follows:

- (a) Coal, 0.69%;
- (b) Limestone or sandstone quarried or mined, 1%;
- (c) Oil or blast furnace slag, 1.94%;
- (d) Natural gas in excess of the value of \$250 quarterly, 3.88%;
- (e) Sand gravel or other mineral products, not quarried or mined, 1.94%;
- (f) Timber, 1%; and
- (g) Other natural resource products, 1.38%.

(2) The measure of this tax is the value of the entire production in the municipality, regardless of the place of sale or the fact that delivery may be made to points outside the municipality.

(B) A person exercising privileges taxable under this section and using or consuming the natural resources so produced in his or her business or transferring or delivering the natural resources as any royalty paid, in kind, or the like, shall be

deemed to be engaged in the business of producing natural resources and shall be required to make returns on account of the production of the business, showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which privilege taxes shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers.

(C) Persons who produce natural resources outside the municipality and who make sale of those products within the municipality shall not pay the tax imposed by this section but shall pay the tax imposed by § 110.060 for the privilege of selling such products within the municipality.

(D) A person exercising any privilege taxable under this section and engaging in the business of selling its natural resource products in the municipality shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in § 110.060 for the privilege of engaging in the business of selling such natural resource products in the municipality.

(1991 Code, § 6-19) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.060 SELLING TANGIBLE PROPERTY.**

(A) Upon every person engaging or continuing within the municipality in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectioneries and other public eating houses and wholesale sales from a rolling stockpile, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds or other evidence of indebtedness, there is hereby levied, and shall be collected, a tax equal to 0.20% of the gross income of the business; except, therein the case of selling at wholesale, the tax shall be equal to 0.13% of the gross income of the business.

(B) Gross income or gross proceeds of sales derived from sales within the state that is not taxed or taxable by any other municipality are included in the measure of municipal business and occupation tax if the sales are either directed from a location within the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when the taxpayer has only one office location and this office is located within the municipality and its activities elsewhere in the state are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

(C) Persons domiciled outside the municipality who solicit sales within the municipality and sell tangible personal property within the municipality are doing business in the municipality, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in the municipality and irrespective of how a sales order is transmitted or processed. If an order is placed in connection with solicitation by a representative (regardless whether there is an employment or agency relationship or whether acting as an independent contractor) who solicits orders within the municipality, and the tangible personal property is to be delivered in the municipality, then the gross proceeds of such sales are included in the measure of the tax imposed by this subchapter.

(1991 Code, § 6-21) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.061 PUBLIC SERVICE OR UTILITY BUSINESS.**

(A) Upon every person engaging or continuing within the municipality in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is levied, and shall be collected, taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows:

(1) Water companies, 2%;

(2) Electric light and power companies, 4% on sales and demand charges for domestic and commercial lighting and 3% on sales and demand charges for all other purposes;

(3) Natural gas companies, 3%; and

(4) Upon all other public service or utility business, 1.31%.

(B) (1) The measure of this tax shall not include gross income derived from commerce between the state and other states of the United States.

(2) The measure of the tax under this section shall include only gross income received from the supplying of public service. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon such other activity by the appropriate section of this subchapter.

(1991 Code, § 6-22) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.062 CONTRACTING.**

Upon every person engaging or continuing within the municipality in the business of contracting, the tax shall be equal to 2% of the gross income of the business.

(1991 Code, § 6-23) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.063 AMUSEMENTS.**

Upon every person engaging or continuing within the municipality in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, carnival, circus, dance hall skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to 0.31% of the gross income of the business.

(1991 Code, § 6-24) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.064 SERVICE BUSINESS OR CALLING NOT OTHERWISE CLASSIFIED.**

(A) Upon every person engaging or continuing within the municipality in any service business or calling not otherwise specifically taxed under this subchapter, there is hereby levied, and shall be collected, a tax equal to 0.50% of the gross income of any such business.

(B) Gross income or gross proceeds of sales derived from services within the state that is not taxed or taxable by any other municipality are included in the measure of tax under this subchapter if the services are either directed from a location in the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when a taxpayer has only one office location and this office is located within the municipality and its activities elsewhere in the state are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

(1991 Code, § 6-25) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.065 RENTALS AND ROYALTIES.**

Upon every person engaging or continuing within the municipality in the business of furnishing any real or tangible personal property which has a tax situs in the municipality, or any interest therein, for hire, loan, lease or otherwise, whether the return is in the form of rentals, royalties, fees or otherwise, the tax shall be 0.50% of the gross income of any such activity. The term **TANGIBLE PERSONAL PROPERTY**, as used herein, shall not include money or public securities.

(1991 Code, § 6-26) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.066 BANKING AND OTHER FINANCIAL BUSINESSES.**

Upon every person engaging or continuing within the municipality in the business of banking or financial business, the tax shall be equal to 0.75% of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties; charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property; provided, that gross income shall not include:

(A) Interest received on the obligations of the United States, its agencies and instrumentalities;

(B) Interest received on the obligations of this or any other state, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia; or

(C) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by non-transients; provided further, that all interest derived on activities exempt under this division (C) shall be reported, as to amounts, on the return of a person taxable under the provision of this section.

(1991 Code, § 6-27) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.067 HEALTH MAINTENANCE ORGANIZATIONS.**

The rate tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of W.Va. Code §§ 33-25A-1 et seq., shall not exceed 0.50% to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the public employee insurance agency pursuant to W.Va. Code §§ 5-16-1 et seq. and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization that is expended for administrative expenses; and shall not exceed 0.50% to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the public employees insurance agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization; provided, that this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in the municipality, whether such income is in the form of rentals or royalties.

(1991 Code, § 6-28) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.068 ADDITIONAL CREDITS.**

(A) A person taxable under § 110.060 with respect to selling products at wholesale in this municipality shall be allowed a non-refundable credit against the tax imposed on such wholesale sales pursuant to § 110.060 for any:

(1) Manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this municipality; and/or

(2) Extracting taxes paid by such person with respect to the extracting of products so sold in this municipality or

ingredients of products so sold at wholesale in this municipality.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**EXTRACTING TAX.** A gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a producer of natural resource products and includes:

(a) The tax imposed in §110.059; and

(b) Similar gross receipts taxes paid to other municipalities or other local government units within the United States (other than state governments) within the United States.

**GROSS RECEIPTS TAX.** A tax which:

(a) Is imposed on or measured by the gross volume of business in terms of gross receipts or in other terms and in the determination of which deductions allowed would not constitute the tax, an income tax or value added tax; and

(b) Which is not, pursuant to law or custom, separately stated from the sales price.

**MANUFACTURING TAX.**

(a) A gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a manufacturer and includes: similar gross receipts taxes paid to other municipalities or other local government units (other than State governments) within the United States.

(b) The manufacturing tax was deleted effective July 2018 by Ordinance 248.

(C) If imposition of the municipality's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the tax under this subchapter, and still apply the tax to as much of the taxpayer's activities as may be subject to the municipality's taxing authority.

(1991 Code, § 6-30) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.069 EXEMPT ACTIVITIES.**

The provisions of this subchapter shall not apply to:

(A) Insurance companies which pay the state a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the municipality, whether such income is in the form of rentals or royalties;

(B) Non-profit cemetery companies organized and operated for the exclusive benefit of their members;

(C) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of W.Va. Code §§ 60-7-1 et seq.;

(D) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;

(E) Production credit associations, organized under the provisions of the Federal Farm Credit Act of 1933, being 12 U.S.C. §§ 2001 et seq.; provided, that the exemption of this section shall not apply to corporations or cooperative associations organized under the provisions of W.Va. Code §§ 19-4-1 et seq.;

(F) Any credit union organized under the West Virginia Code; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W.Va. Code §§ 19-4-1 et seq.; and

(G) Gross income derived from advertising service rendered in the business of radio and television broadcasting.

(1991 Code, § 6-31) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.070 TAX CUMULATIVE.**

The tax, interest and penalty imposed by this subchapter shall be in addition to all other licenses, taxes and other revenue measures levied or collected by the municipality as a condition precedent to the right of any person to engage or continue in any business, profession, trade, calling or other activity within this municipality. A person exercising a privilege taxable under this subchapter, subject to the payment of all licenses and charges which are conditions precedent to exercising the privileges taxed, may exercise the privilege in this municipality for the tax year upon the condition that he or she shall pay the tax, interest and penalty imposed by this subchapter.

(1991 Code, § 6-32) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.071 ADMINISTRATION GENERALLY.**

The administration of this subchapter is vested in and shall be exercised by the Treasurer who shall prescribe forms and may promulgate from time to time reasonable rules, publications and instructions for the making of returns, and for ascertaining, assessment, collection and administration of tax, interest and penalty imposed hereunder.

(1991 Code, § 6-33) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.072 RETURNS; COMPUTATION AND PAYMENT OF TAX.**

(A) The tax levied by this subchapter shall be due and payable in quarterly installments on or before the expiration of one month from the end of the calendar quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make a return reporting the computation of tax for which it is liable for each quarter; sign and mail the completed return, together with any remittance due, to the location specified by the Treasurer. In reporting and remitting the amount of the tax, interest and penalties due for each quarter, the taxpayer may deduct the quarterly credit allowed by § 110.068. The Treasurer may allow return and payment under this section for periods other than quarterly periods.

(B) On or before 31 days after the end of the tax year, each person liable for the payment of tax under this subchapter shall make a fourth quarter return, showing the gross proceeds of sale or gross income of business, trade, calling or activity, computing the amount of tax, interest and penalty chargeable against the person in accordance with the provisions of this subchapter and transmit with the return a remittance in the sum required by this subchapter, covering the remainder of the tax, interest and penalty chargeable against the person for the tax year, to such location or locations specified by the Treasurer. Such returns shall be verified by the oath of the taxpayer, if made by an individual, or by the individual designated by a taxpayer that is an entity to take the oath on behalf of the taxpayer.

(C) All remittances and payments of tax, interest and penalty imposed by this subchapter shall be made to the Treasurer, in lawful money of the United States or by bank draft, certified check, cashier's check or other commercially acceptable means specified by the Treasurer, to be kept, deposited and accounted for as provided by law.

(1991 Code, § 6-34) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.073 TAXPAYER RECORDS.**

Each person subject to this subchapter shall maintain sufficient records for review by the Treasurer as long as the contents of such records may be material in the administration of tax imposed by this subchapter.

(1991 Code, § 6-35) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.074 TAX RETURN INFORMATION CONFIDENTIALITY.**

(A) Except when required in an investigation or proceeding to ascertain or collect amount of tax, interest, penalty, refund or credit due, or pursuant to an exemption in W.Va. Code § 11-10-5d, it shall be unlawful for any officer, employee or agent of the municipality to divulge or make known in any manner the tax return, or any part thereof, of any person, or disclose information concerning the personal affairs of any individual or the business of any person, or disclose the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the Treasurer or otherwise obtained by the municipality in an investigation undertaken by the Treasurer concerning the tax imposed by this subchapter. Any person protected by the provisions of this subchapter may, in writing, waive the confidentiality provisions of this section for such purpose and such period as he or she shall therein state. This section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular reports and the items thereof. This section shall not be construed to prohibit the publication by the Treasurer of the list of delinquent business and occupation taxpayers as provided for in this subchapter.

(B) Notwithstanding the foregoing, the Treasurer may permit the proper officer, or his or her authorized representative or agent, of the United States or the state, or any political subdivision of the state, to inspect return information to or may furnish to such officer or representative a copy of any such return or any other tax return information, provided, that such other jurisdiction grants similar privileges to this municipality or if the other jurisdiction is a party of an intergovernmental agreement authorizing the exchange of such information.

(1991 Code, § 6-36) (Ord. 070, passed 1-3-2008; Ord. 226, passed 12-15-2016; Ord. 236, passed 5-18-2017) Penalty, see § 110.999

#### **§ 110.075 ERRONEOUS COMPUTATION OF TAX.**

If any taxpayer shall make any error in computing the tax, interest and penalty under this subchapter, the Treasurer shall correct such error or reassess the proper amount of tax, interest and penalty, and notify the taxpayer of his or her action by mailing the taxpayer promptly a copy of the corrected assessment, and any additional tax, interest and penalty for which such taxpayer may be liable shall be paid within 15 days after the receipt of such statement. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the request of the Treasurer and shall be payable out of any funds available for the purpose. The taxpayer may, at its election, apply an overpayment as credit upon tax subsequently accruing hereunder.

(1991 Code, § 6-37) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.076 INVESTIGATIONS.**

(A) For the purpose of ascertaining the correctness of a tax return, claim or assessment or for the purpose of making an estimate of any taxpayer's liability for the tax administered under this subchapter, the Treasurer shall have the power to examine or cause to be examined any books, papers, records, memoranda and other documents or data bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge of relevant matters. In connection therewith, the Treasurer may take testimony and shall have the power to administer oaths.

(B) The Treasurer has the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and production of documents for the purpose of ascertaining the correctness of a return or claim or for performing an assessment or for any hearing held by the Treasurer. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the Treasurer may invoke the aid of the Circuit Court of the county. Upon proper showing, the Treasurer may apply for an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question.

(1991 Code, § 6-38) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.077 ASSESSMENTS.**

(A) If any person who is required by this subchapter to do so shall fail or refuse to make a return, either in whole or part; or if the Treasurer believes the tax imposed by this subchapter has been insufficiently returned by any taxpayer, the Treasurer may proceed to assess the tax and shall notify the person assessed of the amount of the tax, additional tax, interest and penalties so assessed.

(B) The Treasurer may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the Treasurer ascertains that such assessment is improper or incomplete in any material respect. The Treasurer may, at any time within the period prescribed for assessment, make a supplemental assessment whenever the Treasurer ascertains that any assessment is incorrect in any material respect.

(C) The amount of tax, interest and penalties imposed by this subchapter shall be assessed within three years after the date the fourth quarter return for the year in which such tax arose is filed by the taxpayer; provided, that in the case of a false or fraudulent return filed with the intent to evade the tax or in case no return is filed, an assessment may be made at any time.

(1991 Code, § 6-39) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.078 NOTICE OF ASSESSMENT; PETITION FOR REASSESSMENT.**

The Treasurer shall give the taxpayer written notice of any assessment made pursuant to this subchapter. Unless the taxpayer to whom the notice of assessment is given shall within 30 days after service thereof file with the Treasurer a petition for reassessment, the assessment shall become final and not subject to administrative or judicial review. A petition for reassessment must be in writing verified under oath by the taxpayer or his or her duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections. The total amount of an assessment shall be due and payable on the day following the date upon which the assessment becomes final.

(1991 Code, § 6-40) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.079 HEARING PROCEDURE; DECISION; REVIEW.**

(A) When a petition for reassessment or a petition for refund or credit is properly filed pursuant to this subchapter within the time prescribed for such filing, the Treasurer shall assign a time and a place for a hearing thereon and shall notify the petitioner of such hearing by written notice at least 20 days in advance thereof. Such hearing shall be held within 90 days from the date of filing the petition, unless continued by agreement of the parties or by the Treasurer for sufficient cause. The hearing shall be informal and shall be conducted in an impartial manner by the Treasurer or a hearing examiner designated by the Treasurer. The burden of proof shall be upon the taxpayer to show that the assessment or denied refund or credit is incorrect and contrary to law, in whole or in part.

(B) After such hearing, the Treasurer shall, within a reasonable time, give notice in writing to the taxpayer of the Treasurer's decision. An appeal may be taken by the taxpayer to the Circuit Court of the county within 60 days after service of the Treasurer's administrative decision issued pursuant to this section.

(1991 Code, § 6-41) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.080 INJUNCTION.**

After any delinquency shall have continued 60 days, the Treasurer may proceed in the Circuit Court of the county to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all tax, interest and penalty due under this subchapter. In any proceeding under this section, upon judgment or decree for the municipality, the municipality shall be awarded its costs.

(1991 Code, § 6-42) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.081 UNPAID TAX A LIEN; DELINQUENCY NOTICE FILING AND RELEASE.**

Any tax, interest and penalties due and payable under this subchapter shall be a debt due the municipality and shall constitute a lien on the real and personal property of the taxpayer. The Treasurer, for the more effective collection of the tax, interest and penalty imposed by this subchapter, may file with the Clerk of the County Commission a certified notice of lien for delinquent taxes, interest and penalty under this subchapter for recordation. If a lien has been recorded respecting a delinquency, upon full payment of all delinquent tax, interest and penalty, the Treasurer shall attest to the fact and amount of payment, and shall forward a certificate of release to the taxpayer. Upon presentment and payment of the recording fee by the taxpayer, the Clerk of the County Commission shall record such certificate in the book in which releases are recorded.

(1991 Code, § 6-43) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.082 SUCCESSOR LIABILITY.**

The tax, interest and penalty imposed by this subchapter shall be a continuing lien upon the property of any person subject to the provisions hereof who shall sell out its business or stock of goods, or shall quit business, and such person shall be required to make the return provided for in this subchapter within 30 days after the date it sold out its business or stock of goods, or quit business, and its successor in business shall be required to withhold sufficient of the purchase money to cover the amount of such tax, interest and penalty due and unpaid until such time as the former owner shall produce a receipt from the Treasurer showing that all tax, interest and penalty has been paid. If the purchaser of a business or stock of goods fails to withhold purchase money as hereby provided, and the tax, interest and penalty shall be due and unpaid after the 30-day period allowed, the successor shall be personally liable for the payment of the tax, interest and penalty accrued and unpaid on account of the operation of the business by the former owner.

(1991 Code, § 6-44) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.083 REVOCATION, NON-RENEWAL OF LICENSES AND PERMITS.**

(A) The Treasurer has the authority to revoke, deny and prevent any and all licenses and permits issued by the municipality in the event a licensee or permittee fails or refuses to file any return required hereby or fails or refuses to pay any delinquent tax, interest or penalty due and owing to the municipality.

(B) In the event of such a revocation or denial, the Treasurer will provide written notice to the affected person at least five days prior to the contemplated revocation or denial and such notice shall be served by certified mail. The notice shall indicate the time and the place of a revocation/denial review meeting, the general grounds of said contemplated action, and shall advise the affected person of its rights to appear at said hearing in person and represented by legal counsel, and to be heard orally upon the merits of the person's defense. The Treasurer may request legal advice from the City Attorney, and adopt such procedures for its decorum and the dispatch of business at such hearings as the Treasurer may regard advisable. The revocation decision of the Treasurer will be final.

(C) Each license or permit that has been revoked or denied pursuant to this section may be issued or re-issued upon payment of all delinquent tax, interest or penalty due and owing to the municipality and satisfaction of all relevant licensing conditions otherwise imposed by the municipality.

(1991 Code, § 6-45) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.084 SETTLEMENT AGREEMENTS AND COMPROMISES.**

The Treasurer, with approval of the Mayor, is authorized to enter into an agreement in writing with any person relating to the liability of such person in respect of the tax, interest and penalty imposed by this subchapter for any taxable period. If such a closing agreement is duly made and entered into, such agreement shall be final and conclusive for the periods covered except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The Treasurer, with approval of the Mayor, may compromise all or part of any administrative determination or civil case concerning tax, interest and penalty or otherwise arising under the provisions of this subchapter.

(1991 Code, § 6-46) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.085 ADDITIONAL ADMINISTRATIVE PROVISIONS CONCERNING CONTRACTING.**

(A) Without limiting the generality of the administrative and collection powers granted to the Treasurer in this subchapter, the Treasurer is also empowered to require any person engaging or continuing within the municipality in the business of contracting to furnish a list of the names, addresses and amounts paid by them to any subcontractors employed and suppliers of materials used upon any job or to do any work within the municipality. The Treasurer may also require every person engaging or continuing within the municipality in the business of contracting who is a nonresident of the state to pay or guarantee the payment of the amount of the tax imposed by this subchapter for the privilege of engaging in the business of contracting within the municipality, such payment of such tax to be based upon the amount of the building permit issued by the municipality for the work to be performed by such person, as a condition precedent to the issuance of such building permit. In lieu of such prior payment in cash of such tax, any such nonresident may guarantee the payment of such privilege tax provided for herein by delivering to the municipality a bond, with good and adequate surety, payable to the municipality, and conditioned to pay such tax on or before the estimated date of the completion of the work to be performed by such person within the municipality.

(B) Any person engaging a contractor or subcontractor within this municipality shall withhold payment in sufficient amount to cover taxes assessed by this subchapter in the final settlement of such contracts until the receipt of a certificate from the Treasurer to the effect that all taxes levied and accrued under this subchapter against the contractor have been paid. If any

person fails to withhold as provided herein and the contractor or subcontractor fails to timely pay such tax, such person shall be personally liable for the payment of such taxes, and the same shall be recoverable by the Treasurer by appropriate legal proceedings.

(1991 Code, § 6-47) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.086 CLAIMS FOR REFUND OR CREDIT.**

(A) Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this subchapter shall file its claim with the Treasurer within three years after the due date of the return in respect of which the tax was imposed, and not thereafter.

(B) If, as a result of the claim, the Treasurer shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, the Treasurer shall refund the same to the taxpayer. If the Treasurer denies the claim, the taxpayer may within 30 days after notice of denial file with the Treasurer a petition for refund or credit, which shall be heard in accordance with § 110.079. A taxpayer's failure to abide by express procedures contained in this section precludes taxpayer's right to any refund or credit of tax, interest and penalties paid or collected under this subchapter.

(1991 Code, § 6-48) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.087 INTEREST AND PENALTY.**

(A) The tax imposed by this subchapter, if not paid when due, shall bear interest at the rate of 8% per annum from the due date of the payment until paid.

(B) If any person fails to make the return or any quarterly installment required by this subchapter, or makes its return but fails to remit, in whole or in part, the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of 5% of the tax for the first month, or fraction thereof, of delinquency, and 1% of the tax for each succeeding month, or fraction thereof of delinquency; provided, that if such failure is due to reasonable cause, the Treasurer may waive, in whole or in part, these penalties. Additionally, if the failure to pay is due to fraud or intent to evade any such tax there shall be added an additional penalty of 25% of the tax owed, exclusive of penalties. Interest and penalties may be collected in the same manner as the tax imposed by this subchapter.

(1991 Code, § 6-49) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.088 EFFECTIVE DATE.**

The tax imposed by this subchapter shall first accrue July 1, 2017.

(1991 Code, § 6-51) (Ord. 070, passed 1-3-2008; Ord. 236, passed 5-18-2017)

#### **§ 110.089 PUBLICATION.**

(A) *Delinquent list preparation.*

(1) The Treasurer shall prepare the delinquent list in a manner set forth W.Va. Code § 8-13-25.

(2) The Treasurer shall adopt policies and procedures designed to verify each delinquency prior to publication.

(3) The delinquent list may include the name of the delinquent taxpayer and the year(s) in which the delinquency arises.

(4) For each delinquent list published by the city, and prior to such publication, the Treasurer shall take an oath, to be included in or attached to the delinquent list, certified by the City Clerk or some other person duly authorized to administer oaths, in form and effect as follows:

"I, \_\_\_\_\_ Treasurer of the City of Elkins of \_\_\_\_\_, do swear, to the best of my knowledge and belief, that the foregoing list of delinquent business and occupation taxes to be published on \_\_\_\_\_, is complete and accurate, and, as of the date of this oath, that I have not received payment from any of the entities listed for the delinquent amounts included in the list."

(B) *Publication and posting of delinquent tax list; costs.*

(1) A copy of a delinquent list may be posted at the front door of City Hall and may be published as a Class I-0 legal advertisement in the newspaper or other media in compliance with the provisions of W.Va. Code § 8-13-26, chapter fifty-nine of this code, on the city's website or in such other reasonable manner as determined by the city to provide notice of the delinquency without incurring unnecessary costs related to the publication.

(2) Prior to the publication of such list each delinquent taxpayer shall be given 30-day written notice that his or her name is on the list to be published unless the delinquent taxes are paid prior to the date upon which the name can be deleted by the newspaper publication.

(3) To cover the costs of preparing, publishing and posting a delinquent list, a reasonable charge may be added to the amount owed by a taxpayer included in any such list, in addition to the tax, interest and penalty already owed by the taxpayer.

(C) *Notice of delinquent lists to Council and retention of list by city.* A copy of each published delinquent list shall be provided to the Council not later than the first regular meeting of the Council after the publication. A copy of the delinquent list shall be retained by the Treasurer designated in the ordinance for a period of not less than three years.

(Ord. 220, passed 12-15-2016)

**PROTOTYPE WV MUNICIPAL  
BUSINESS AND OCCUPATION TAX ORDINANCE, TAX RETURN,  
INSTRUCTIONS AND PUBLICATIONS**

**Background and Purpose**

The following attached prototype West Virginia municipal business and occupation tax ordinance (the “Materials”) is provided for training purposes as a reference source only. It is for the sole use and benefit of the participants.

The municipal ordinance that you administer will vary from this model. This model is not controlling and may not be cited as legal authority for your municipality. The materials are only provided for the purposes of having a common model for instructional purposes.

“This document is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the West Virginia Municipal League, Inc., its members, and agents are not engaged in rendering legal, accounting or other professional service to you. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.”

*Adopted From a Declaration of Principles Jointly Adopted by a Committee of the  
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**PROTOTYPE WV MUNICIPAL  
BUSINESS AND OCCUPATION TAX ORDINANCE**

A Service for Participating Municipalities of  
The WVML Revenue Enhancement Program  
West Virginia Municipal League, Inc.  
*Release Date: April 27, 2006*  
*Revised May 1, 2025<sup>1</sup>*

**MUNICIPAL BUSINESS AND OCCUPATION TAX**

**§ 1. Short Title**

This article shall be known as the “[NAME] municipal business and occupation tax ordinance.”

**§ 2. Purpose and Intent**

The purpose of this article is to impose a municipal business and occupation tax pursuant to West Virginia Code § 8-13-5 to the fullest extent allowable under the operative laws of the State of West Virginia and the United States unless a more restrictive application is required by an express limitation set forth in this article.

**§ 3. Definitions**

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used:

3.1 **Banking business.** The term “banking business or financial organization” means any bank, banking association, trust company, industrial loan company, small loan company, or licensee, building and loan association, savings and loan association, credit union, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent (90%) of the assets of which consists of intangible personal property and at least ninety percent (90%) of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.

3.2 **Business.** The term “business” means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. The production of raw materials or manufactured products which are used or consumed in the main business shall be deemed a business engaged in taxable in the class for which it falls.

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<sup>1</sup> *This model ordinance was revised in 2025 to incorporate changes to the municipal business and occupation (B&O) tax structure enacted by House Bill 2451 (Regular Session 2025). All amendments resulting from HB 2451 are indicated in red text.*

3.3 Contracting. The term “contracting” means the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

3.4 Gross Income. The term “gross income” generally means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property, real or personal, or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest and discount paid, or sums paid to independent contractors, subcontractors or persons furnished services or property used in the operation of any business to produce gross income, or any other expense whatsoever. “Gross income” of a banking or financial business is specified in section 13 of this article.

3.5 Gross proceeds of sales. The term “gross proceeds of sales” means the value actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The words “gross income” and “gross proceeds of sales” shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the “gross income” or “gross proceeds of sales”; excise taxes imposed by the state; money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for repayment of a debt of another; and excise taxes imposed by the federal government upon the consumer, not manufacturer, and which are held in trust by the vendor as agent for the federal government.

3.6 Municipality. The term “municipality” means the [City/Town/Village] of [NAME].

3.7 [OFFICIAL]. The term “[OFFICIAL]” means the municipality’s [TITLE *e.g.*, collector, finance director, recorder, treasurer, etc.] and his or her agents, delegates or representatives.

3.8 Person. The terms “person” and “company” are used interchangeably in this article and mean and include any individual, firm, copartnership, joint adventure, association, corporation, limited liability company, trust, estate or any other group or combination acting as a unit, and the plural as well as the singular number. The word “it” shall also include the pronouns “he” and “she”.

3.9 Retail sales. The terms “retail sales” and “selling at retail” mean all sales other than wholesale sales, including but not limited to sales to persons for use in any activity not subject to the tax imposed by this article, all sales of real property, and sales to consumers.

3.10 Sale. The terms “sale” and “sales” mean any transfer of the ownership of or title to property, whether for money or in exchange for other property.

3.11 Services. The term “service business or calling” includes all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the services rendered by an employee to his employer.

3.12 Tax year. The terms “tax year” and “taxable year” mean either the calendar year or the taxpayer’s fiscal year when permission is obtained in writing from the OFFICIAL to use such fiscal year in lieu of the calendar year.

3.13 Taxpayer. The term “taxpayer” means any person liable for any tax hereunder.

3.14 Wholesale sales. The terms “selling at wholesale” and “wholesale sales” mean only (a) sales of tangible personal property for the purpose of resale in the form of tangible personal property, (b) sales of machinery, supplies or materials which are to be directly consumed by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article, or (c) sales of tangible personal property to the United States of America, its agencies and instrumentalities, or to the State of West Virginia, its institutions and political subdivisions.

#### **§ 4. Imposition of Tax**

There are hereby levied and imposed and shall be collected annual privilege taxes, against the persons, on account of the business and other activities and in the amounts to be determined by the application of rates against values or gross income or gross proceeds as set forth in sections 5 through 14 of this article, inclusive.

If any person liable for any tax under section 5 or 6 of this article shall ship or transport its products, or any part thereof, out of the municipality without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the municipality shall be the basis for the assessment of the tax imposed in those sections. Gross income included in the measure of the tax under section 5 or 6 of this article, shall neither be added nor deducted in computing the tax levied under the other sections of this article. In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and the seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the value upon which such privilege tax shall be levied shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and the seller but where the circumstances or conditions are otherwise similar.

The municipal business and occupation tax is imposed on each person engaged in privileges taxable under this article if such person is engaged in purposive revenue generating activities within the municipality's limits and such person has sufficient contacts to sustain the municipality's taxing jurisdiction. By way of example (but not limitation), if a person's activities within the municipality contributes to the establishment and maintenance of a market, such contacts are considered to be sufficient to sustain the municipality's taxing jurisdiction assuming federal constitutional nexus standards are satisfied.

Notwithstanding the foregoing, no tax shall be imposed pursuant to this section for any tax year in which the taxpayer's gross income is less than two thousand five hundred dollars (\$2,500.00), as further provided in § 17A of this article.

## **§ 5. Natural Resource Production**

Upon every person engaging or continuing within the municipality in the business of severing, extracting, mining, quarrying, reducing to possession and/or producing for sale, profit or commercial use any natural resource products, the amount of such tax shall be equal of the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as hereinafter provided, multiplied by the respective rates as follows: Coal, one percent (1.00%); limestone or sandstone quarried or mined, one and one-half percent (1.50%); oil or blast furnace slag, three percent (3.00%); natural gas in excess of the value of five thousand dollars (\$5,000.00), six percent (6.00%); sand gravel or other mineral products, not quarried or mined, three percent (3.00%); timber one and one-half percent (1.50%), and other natural resource products, two percent (2.00%).

The measure of this tax is the value of the entire production in the municipality, regardless of the place of sale or the fact that delivery may be made to points outside the municipality.

A person exercising privileges taxable under this section and using or consuming the natural resources so produced in his business or transferring or delivering the natural resources as any royalty paid, in kind, or the like, shall be deemed to be engaged in the business of producing natural resources and shall be required to make returns on account of the production of the business, showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which privilege taxes shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers.

Persons who produce natural resources outside the municipality and who make sale of those products within the municipality shall not pay the tax imposed by this section but shall pay the tax imposed by section 7 of this article for the privilege of selling such products within the municipality.

A person exercising any privilege taxable under this section and engaging in the business of selling its natural resource products in the municipality shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in section 7 of this article for the privilege of engaging in the business of selling such natural resource products in the municipality.

## **§ 6. Manufacturing**

Upon every person engaging or continuing within the municipality in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others, in whole or part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), the amount of the tax shall be equal to the value of the article, substance, commodity or newspaper manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of thirty one-hundredths percent (0.30%).

The measure of the tax in this section is the value of the entire product manufactured, compounded or prepared in the municipality for sale; profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the municipality. It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the municipality and partially manufactures, compounds or prepares such products outside the municipality, the measure of tax under this section shall be that proportion of the sales price of the product that the payroll costs of manufacturing within the municipality bears to the entire payroll costs of manufacturing the product.

If any person shall ship or transport its products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed. The OFFICIAL may prescribe equitable and uniform rules of ascertaining such value; provided that, in the absence of such rules, the person manufacturing the products within the municipality shall report the value in a consistent and reasonable manner.

The dressing and processing of food intended for human consumption by a person, or the cooking and serving of food by a restaurant which food is to be sold in the municipality by such person, shall not be considered manufacturing or compounding or preparing for sale, but the sale of these products shall be reported under section 7 of this article either as wholesale or retail sale, as the case may be.

Persons who manufacture, compound or prepare products outside the municipality and who make sale of such product within the municipality shall not pay the tax imposed by this section but shall pay tax imposed by section 7 of this article for the privilege of selling such product within the municipality.

A person exercising any privilege taxable under this section and engaging in the business of selling its product in the municipality shall be required to make returns of the gross proceeds of such sales and pay the tax imposed by this section at the rate set forth in section 7 of this article for the privilege of engaging in the business of selling such manufactured goods in the municipality.

## **§ 7. Selling Tangible Property**

Upon every person engaging or continuing within the municipality in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectioneries and other public eating houses and wholesale sales from a rolling stockpile, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds, or other evidence of indebtedness, there is hereby levied, and shall be collected, a tax equal to one-half of one percent (0.50%) of the gross income of the business; except, therein the case of selling at wholesale, the tax shall be equal to fifteen one-hundredths percent (0.15%) of the gross income of the business.

Gross income or gross proceeds of sales derived from sales within West Virginia that is not taxed or taxable by any other municipality are included in the measure of municipal business and occupation tax if the sales are either directed from a location within the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when the taxpayer has only one (1) office location and this office is located within the municipality and its activities elsewhere in West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

Persons domiciled outside the municipality who solicit sales within the municipality and sell tangible personal property within the municipality are doing business in the municipality, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in the municipality and irrespective of how a sales order is transmitted or processed. If an order is placed in connection with solicitation by a representative (regardless whether there is an employment or agency relationship or whether acting as an independent contractor) who solicits orders within the municipality, and the tangible personal property is to be delivered in the municipality, then the gross proceeds of such sales are included in the measure of the tax imposed by this article.

## **§ 8. Public Service or Utility Business**

Upon every person engaging or continuing within the municipality in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is levied, and shall be collected, taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: Water companies, four percent (4.00%); electric light and power companies, four percent (4.00%) on sales and demand charges for domestic and commercial lighting and three percent (3.00%) on sales and demand charges for all

other purposes; natural gas companies, three percent (3.00%); and upon all other public service or utility business, two percent (2.00%). The measure of this tax shall not include gross income derived from commerce between the state and other states of the United States. The measure of the tax under this section shall include only gross income received from the supplying of public service. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon such other activity by the appropriate section of this article.

### **§ 9. Contracting**

Upon every person engaging or continuing within the municipality in the business of contracting, the tax shall be equal to two percent (2.00%) of the gross income of the business.

### **§ 10. Amusements**

Upon every person engaging or continuing within the municipality in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, carnival, circus, dance hall skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to one-half of one percent (0.50%) of the gross income of the business.

### **§ 11. Service Business or Calling Not Otherwise Classified**

Upon every person engaging or continuing within the municipality in any service business or calling not otherwise specifically taxed under this article, there is hereby levied, and shall be collected, a tax equal to one percent (1.00%) of the gross income of any such business.

Gross income or gross proceeds of sales derived from services within West Virginia that is not taxed or taxable by any other municipality are included in the measure of tax under this article if the services are either directed from a location in the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when a taxpayer has only one (1) office location and this office is located within the municipality and its activities elsewhere in West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

### **§ 12. Rentals and Royalties**

Upon every person engaging or continuing within the municipality in the business of furnishing any real or tangible personal property which has a tax situs in the municipality, or any interest therein, for hire, loan, lease or otherwise, whether the return is in the form of rentals, royalties, fees or otherwise, the tax shall be one percent (1.00%) of the gross income of any such activity. The term "tangible personal property", as used herein, shall not include money or public securities.

### **§ 13. Banking and Other Financial Businesses**

Upon every person engaging or continuing within the municipality in the business of banking or financial business, the tax shall be equal to one percent (1.00%) of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties; charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property; provided, that gross income shall not include (a) interest received on the obligations of the United States, its agencies and instrumentalities; (b) interest received on the obligations of this or any other state, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia; or (c) interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients; provided further, that all interest derived on activities exempt under (c) above shall be reported, as to amounts, on the return of a person taxable under the provision of this section.

#### **§ 14. Health Maintenance Organizations**

The rate tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of West Virginia Code §§ 33-25A-1 et seq. shall not exceed one half of one percent (0.50%) to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the public employee insurance agency pursuant to West Virginia Code §§ 5-16-1 et seq., and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization that is expended for administrative expenses; and shall not exceed one-half of one percent (0.50%) to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the public employees insurance agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: Provided, That this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in the municipality, whether such income is in the form of rentals or royalties.

#### **§ 15. Quarterly Credit**

There shall be allowed a quarterly exemption in every case of [FLAT] dollars (\$[.00] in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a quarter shall be entitled to an exemption of the sum bearing the proportion to [FLAT] dollars (\$[.00] that the period of time the privilege is exercised bears to a whole quarter. Only one exemption shall be allowed to any one person, regardless whether that person exercises one or more privileges taxable hereunder.

The exemption provided in § 17A of this article for persons with gross income less than two thousand five hundred dollars (\$2,500.00) in a tax year shall apply in addition to the quarterly credit provided in this section. However, if a taxpayer qualifies for the exemption in

§ 17A, no tax shall be due, and the quarterly credit shall not be applied or carried forward for that tax year.]

## § 16. Additional Credits

16.1 A person taxable under section 7 of this article with respect to selling products at wholesale in this municipality shall be allowed a non-refundable credit against the tax imposed on such wholesale sales pursuant to section 7 for any (a) manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this municipality, and/or (b) extracting taxes paid by such person with respect to the extracting of products so sold in this municipality or ingredients of products so sold at wholesale in this municipality.

16.2 For purposes of this section:

(a) “Manufacturing tax” means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a manufacturer and includes (i) the tax imposed in section 6 of this article and (ii) similar gross receipts taxes paid to other municipalities or other local government units (other than State governments) within the United States.

(b) “Extracting tax” means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a producer of natural resource products and includes (i) the tax imposed in section 5 of this article and (ii) similar gross receipts taxes paid to other municipalities or other local government units within the United States (other than State governments) within the United States.

(c) “Gross receipts tax” means a tax which (i) is imposed on or measured by the gross volume of business in terms of gross receipts or in other terms and in the determination of which deductions allowed would not constitute the tax an income tax or value added tax and (ii) which is not, pursuant to law or custom, separately stated from the sales price.

16.3 If imposition of the municipality’s tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the tax under this article, and still apply the tax to as much of the taxpayer's activities as may be subject to the municipality’s taxing authority.

## § 17. Exempt Activities

The provisions of this article shall not apply to: (a) Insurance companies which pay the State of West Virginia a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the municipality, whether such income is in the form of rentals or royalties; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their

members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of West Virginia Code §§ 60-7-1 et seq.; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) production credit associations, organized under the provisions of the federal Farm Credit Act of 1933; provided, that the exemption of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§ 19-4-1 et seq.; (f) any credit union organized under the West Virginia Code; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§ 19-4-1 et seq.; and (g) gross income derived from advertising service rendered in the business of radio and television broadcasting.

### **§ 17A. De Minimis Gross Income Exemption for Small Businesses**

Effective July 1, 2025, a person engaging in business within the municipality shall not be subject to the municipal business and occupation or privilege tax imposed by this article for any tax year in which the taxpayer's gross income, as defined in § 3.4 of this article, is less than two thousand five hundred dollars (\$2,500.00).

This exemption shall apply on a prospective basis only and shall not affect liability for any tax periods ending prior to July 1, 2025.

For purposes of this section, the term "gross income" shall be interpreted consistently with § 3.4 of this article and includes all receipts and values accruing to the taxpayer from engaging in business, without deduction.

### **§ 18. Tax Cumulative**

The tax, interest and penalty imposed by this article shall be in addition to all other licenses, taxes and other revenue measures levied or collected by the municipality as a condition precedent to the right of any person to engage or continue in any business, profession, trade, calling or other activity within this municipality. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are conditions precedent to exercising the privileges taxed, may exercise the privilege in this municipality for the tax year upon the condition that he shall pay the tax, interest and penalty imposed by this article.

### **§ 19. Administration Generally**

The administration of this article is vested in and shall be exercised by the OFFICIAL who shall prescribe forms and may promulgate from time to time reasonable rules, publications and instructions for the making of returns, and for ascertaining, assessment, collection and administration of tax, interest and penalty imposed hereunder.

## **20. Returns; Computation and Payment of Tax**

The tax levied by this article shall be due and payable in quarterly installments on or before the expiration of one month from the end of the calendar quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make a return reporting the computation of tax for which it is liable for each quarter; sign and mail the completed return, together with any remittance due, to the location specified by the OFFICIAL. In reporting and remitting the amount of the tax, interest and penalties due for each quarter, the taxpayer may deduct the quarterly credit allowed by section 15 of this article. The OFFICIAL may allow return and payment under this section for periods other than quarterly periods.

On or before thirty-one (31) days after the end of the tax year, each person liable for the payment of tax under this article shall make a fourth quarter return, showing the gross proceeds of sale or gross income of business, trade, calling or activity, computing the amount of tax, interest and penalty chargeable against the person in accordance with the provisions of this article and transmit with the return a remittance in the sum required by this article, covering the remainder of the tax, interest and penalty chargeable against the person for the tax year, to such location or locations specified by the OFFICIAL. Such returns shall be verified by the oath of the taxpayer, if made by an individual, or by the individual designated by a taxpayer that is an entity to take the oath on behalf of the taxpayer.

All remittances and payments of tax, interest and penalty imposed by this article shall be made to the OFFICIAL, in lawful money of the United States or by bank draft, certified check, cashier's check, or other commercially acceptable means specified by the OFFICIAL, to be kept, deposited and accounted for as provided by law.

A person whose gross income for a tax year is less than two thousand five hundred dollars (\$2,500.00), as described in § 17A of this article, shall not be liable for the tax imposed by this article but may be required to file a return or declaration indicating that their gross income is below the applicable threshold, in such form as the OFFICIAL may prescribe.

## **§ 21. Taxpayer Records**

Each person subject to this article shall maintain sufficient records for review by the OFFICIAL as long as the contents of such records may be material in the administration of tax imposed by this article.

## **§ 22. Tax Return Information Confidentiality**

Except when required in an investigation or proceeding to ascertain or collect amount of tax, interest, penalty, refund or credit due, or pursuant to an exemption in W. Va. Code § 11-10-5d, it shall be unlawful for any officer, employee or agent of the municipality to divulge or make known in any manner the tax return, or any part thereof, of any person, or disclose information concerning the personal affairs of any individual or the business of any person, or disclose the amount of income or any particulars set forth or disclosed in any report, declaration

or return required to be filed with the OFFICIAL or otherwise obtained by the municipality in an investigation undertaken by the OFFICIAL concerning the tax imposed by this article. Any person protected by the provisions of this article may, in writing, waive the confidentiality provisions of this section for such purpose and such period as he shall therein state. This section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular reports and the items thereof.

Notwithstanding the foregoing, the OFFICIAL may permit the proper officer, or his authorized representative or agent, of the United States or the state, or any political subdivision of the state, to inspect return information to or may furnish to such officer or representative a copy of any such return or any other tax return information, provided, that such other jurisdiction grants similar privileges to this municipality or if the other jurisdiction is a party of an intergovernmental agreement authorizing the exchange of such information.

### **§ 23. Erroneous Computation of Tax**

If any taxpayer shall make any error in computing the tax, interest and penalty under this article, the OFFICIAL shall correct such error or reassess the proper amount of tax, interest and penalty, and notify the taxpayer of his or her action by mailing the taxpayer promptly a copy of the corrected assessment, and any additional tax, interest and penalty for which such taxpayer may be liable shall be paid within fifteen (15) days after the receipt of such statement. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the request of the OFFICIAL and shall be payable out of any funds available for the purpose. The taxpayer may, at its election, apply an overpayment as credit upon tax subsequently accruing hereunder.

### **§ 24. Investigations**

For the purpose of ascertaining the correctness of a tax return, claim or assessment or for the purpose of making an estimate of any taxpayer's liability for the tax administered under this article, the OFFICIAL shall have the power to examine or cause to be examined any books, papers, records, memoranda and other documents or data bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge of relevant matters. In connection therewith, the OFFICIAL may take testimony and shall have the power to administer oaths.

The OFFICIAL has the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and production of documents for the purpose of ascertaining the correctness of a return or claim or for performing an assessment or for any hearing held by the OFFICIAL. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the OFFICIAL may invoke the aid of the circuit court of [SPECIFY] County. Upon proper showing, the OFFICIAL may apply for an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question.

### **§ 25. Assessments**

If any person who is required by this article to do so shall fail or refuse to make a return, either in whole or part, or if the OFFICIAL believes the tax imposed by this article has been insufficiently returned by any taxpayer, the OFFICIAL may proceed to assess the tax and shall notify the person assessed of the amount of the tax, additional tax, interest and penalties so assessed.

The OFFICIAL may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the OFFICIAL ascertains that such assessment is improper or incomplete in any material respect. The OFFICIAL may, at any time within the period prescribed for assessment, make a supplemental assessment whenever the OFFICIAL ascertains that any assessment is incorrect in any material respect.

The amount of tax, interest and penalties imposed by this article shall be assessed within three (3) years after the date the fourth quarter return for the year in which such tax arose is filed by the taxpayer; provided, that in the case of a false or fraudulent return filed with the intent to evade the tax or in case no return is filed, an assessment may be made at any time.

#### **§ 26. Notice of Assessment; Petition for Reassessment**

The OFFICIAL shall give the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom the notice of assessment is given shall within thirty (30) days after service thereof file with the OFFICIAL a petition for reassessment, the assessment shall become final and not subject to administrative or judicial review. A petition for reassessment must be in writing verified under oath by the taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections. The total amount of an assessment shall be due and payable on the day following the date upon which the assessment becomes final.

#### **§ 27. Hearing Procedure; Decision; Review**

When a petition for reassessment or a petition for refund or credit is properly filed pursuant to this article within the time prescribed for such filing, the OFFICIAL shall assign a time and a place for a hearing thereon and shall notify the petitioner of such hearing by written notice at least twenty (20) days in advance thereof. Such hearing shall be held within ninety (90) days from the date of filing the petition, unless continued by agreement of the parties or by the OFFICIAL for sufficient cause.

The hearing shall be informal and shall be conducted in an impartial manner by the OFFICIAL or a hearing examiner designated by the OFFICIAL. The burden of proof shall be upon the taxpayer to show that the assessment or denial refund or credit is incorrect and contrary to law, in whole or in part.

After such hearing, the OFFICIAL shall, within a reasonable time, give notice in writing to the taxpayer of the OFFICIAL's decision.

An appeal may be taken by the taxpayer to the Circuit Court of [SPECIFY] County within sixty (60) days after service of the OFFICIAL's administrative decision issued pursuant to this section.

### **§ 28. Injunction**

After any delinquency shall have continued sixty (60) days, the OFFICIAL may proceed in the Circuit Court of [SPECIFY] County to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all tax, interest and penalty due under this article. In any proceeding under this section, upon judgment or decree for the municipality, the municipality shall be awarded its costs.

### **§ 29. Unpaid Tax a Lien; Delinquency Notice Filing and Release**

Any tax, interest and penalties due and payable under this article shall be a debt due the municipality and shall constitute a lien on the real and personal property of the taxpayer. The OFFICIAL, for the more effective collection of the tax, interest and penalty imposed by this article, may file with the Clerk of the [SPECIFY] County Commission a certified notice of lien for delinquent taxes, interest and penalty under this article for recordation. If a lien has been recorded respecting a delinquency, upon full payment of all delinquent tax, interest and penalty, the OFFICIAL shall attest to the fact and amount of payment, and shall forward a certificate of release to the taxpayer. Upon presentment and payment of the recording fee by the taxpayer, the Clerk of the [SPECIFY] County Commission shall record such certificate in the book in which releases are recorded.

### **§ 30. Successor Liability**

The tax, interest and penalty imposed by this article shall be a continuing lien upon the property of any person subject to the provisions hereof who shall sell out its business or stock of goods, or shall quit business, and such person shall be required to make the return provided for in this article within thirty (30) days after the date it sold out its business or stock of goods, or quit business, and its successor in business shall be required to withhold sufficient of the purchase money to cover the amount of such tax, interest and penalty due and unpaid until such time as the former owner shall produce a receipt from the OFFICIAL showing that all tax, interest and penalty has been paid. If the purchaser of a business or stock of goods fails to withhold purchase money as hereby provided, and the tax, interest and penalty shall be due and unpaid after the thirty-day period allowed, the successor shall be personally liable for the payment of the tax, interest and penalty accrued and unpaid on account of the operation of the business by the former owner.

### **§ 31. Revocation, Non-renewal of Licenses and Permits**

The OFFICIAL has the authority to revoke, deny and prevent any and all licenses and permits issued by the municipality in the event a licensee or permittee fails or refuses to file any return required hereby or fails or refuses to pay any delinquent tax, interest or penalty due and

owing to the municipality.

In the event of such a revocation or denial, the OFFICIAL will provide written notice to the affected person at least five (5) days prior to the contemplated revocation or denial and such notice shall be served by certified mail. The notice shall indicate the time and the place of a revocation/denial review meeting, the general grounds of said contemplated action, and shall advise the affected person of its rights to appear at said hearing in person and represented by legal counsel, and to be heard orally upon the merits of the person's defense. The OFFICIAL may request legal advice from the City Attorney, and adopt such procedures for its decorum and the dispatch of business at such hearings as the OFFICIAL may regard advisable. The revocation decision of the OFFICIAL will be final.

Each license or permit that has been revoked or denied pursuant to this section may be issued or re-issued upon payment of all delinquent tax, interest or penalty due and owing to the municipality and satisfaction of all relevant licensing conditions otherwise imposed by the municipality.

### **§ 32. Settlement Agreements and Compromises**

The OFFICIAL, with approval of the [Mayor/City Manager], is authorized to enter into an agreement in writing with any person relating to the liability of such person in respect of the tax, interest and penalty imposed by this article for any taxable period. If such a closing agreement is duly made and entered into, such agreement shall be final and conclusive for the periods covered except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The OFFICIAL, with approval of the [Mayor/City Manager], may compromise all or part of any administrative determination or civil case concerning tax, interest and penalty or otherwise arising under the provisions of this article.

### **§ 33. Additional Administrative Provisions Concerning Contracting**

Without limiting the generality of the administrative and collection powers granted to the OFFICIAL in this article, the OFFICIAL is also empowered to require any person engaging or continuing within the municipality in the business of contracting to furnish a list of the names, addresses and amounts paid by them to any subcontractors employed and suppliers of materials used upon any job or to do any work within the municipality. The OFFICIAL may also require every person engaging or continuing within the municipality in the business of contracting who is a nonresident of the State to pay or guarantee the payment of the amount of the tax imposed by this article for the privilege of engaging in the business of contracting within the municipality, such payment of such tax to be based upon the amount of the building permit issued by the municipality for the work to be performed by such person, as a condition precedent to the issuance of such building permit. In lieu of such prior payment in cash of such tax any such nonresident may guarantee the payment of such privilege tax provided for herein by delivering to the municipality a bond, with good and adequate surety, payable to the municipality, and conditioned to pay such tax on or before the estimated date of the completion of the work to be performed by such person within the municipality.

Any person engaging a contractor or subcontractor within this municipality shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the OFFICIAL to the effect that all taxes levied and accrued under this article against the contractor have been paid. If any person fails to withhold as provided herein and the contractor or subcontractor fails to timely pay such tax, such person shall be personally liable for the payment of such taxes, and the same shall be recoverable by the OFFICIAL by appropriate legal proceedings.

#### **§ 34. Claims for Refund or Credit**

Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this article shall file its claim with the OFFICIAL within three (3) years after the due date of the return in respect of which the tax was imposed, and not thereafter.

If, as a result of the claim, the OFFICIAL shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, the OFFICIAL shall refund the same to the taxpayer. If the OFFICIAL denies the claim, the taxpayer may within thirty (30) days after notice of denial file with the OFFICIAL a petition for refund or credit, which shall be heard in accordance with section 27 of this article. A taxpayer's failure to abide by express procedures contained in this section precludes taxpayer's right to any refund or credit of tax, interest and penalties paid or collected under this article.

#### **§ 35. Interest and Penalty**

The tax imposed by this article, if not paid when due, shall bear interest at the rate of eight percent (8.00%) per annum from the due date of the payment until paid.

If any person fails to make the return or any quarterly installment required by this article, or makes its return but fails to remit, in whole or in part, the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five (5.00%) percent of the tax for the first month, or fraction thereof, of delinquency, and one (1.00%) of the tax for each succeeding month, or fraction thereof of delinquency provided, that if such failure is due to reasonable cause, the OFFICIAL may waive, in whole or in part, these penalties. Additionally, if the failure to pay is due to fraud or intent to evade any such tax there shall be added an additional penalty of twenty-five (25.00%) of the tax owed, exclusive of penalties.

Interest and penalties may be collected in the same manner as the tax imposed by this article.

#### **§ 36. Severability**

If any provision of this article is held unconstitutional or invalid, on its face or as

applied, the remaining provisions of this article shall remain in full force and effect; and to this end, the provisions of this article are declared to be severable.

**§ 37. Effective Date**

The tax imposed by this article shall first accrue [DATE]. *Note: coordinate with any existing taxes.*

[Remainder of Page Intentionally Blank – Example Follows]

### Summary of Provisions in Play (Example):

- **§ 15: Assume Quarterly Credit of \$10:**

Each taxpayer receives a **\$10 credit per quarter** against taxes owed. That's **\$40 per year, but only offsets tax due**, not income.

- **§ 17A: De Minimis Exemption (Effective 7/1/2025)**

No tax is due at all if **gross income is under \$2,500 annually**. In that case, **no return needs to be filed unless the OFFICIAL requires it**, and no credit applies because **there's no tax to offset**.

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#### Examples:

##### 1. Taxpayer with \$2,400 Gross Income for the Tax Year

- **Result under § 17A:**

Fully exempt from B&O tax due to being under \$2,500.

- **Quarterly credit under § 15:**

Not applied. There's no tax due, so the credit is irrelevant.

- **Return requirement:**

May not need to file a return at all, unless required by the OFFICIAL for verification (as provided in § 20).

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##### 2. Taxpayer with \$2,600 Gross Income for the Tax Year

Income is equally spread: \$650/quarter

Applicable tax rate: Let's assume 1.00% (e.g., for "service business" under § 11)

#### Step-by-Step:

- **Quarter 1:**  $\$650 \times 1\% = \$6.50 \rightarrow \$6.50 - \$10 \text{ credit} = \$0 \text{ tax due}$
- **Quarter 2:**  $\$650 \times 1\% = \$6.50 \rightarrow \$6.50 - \$10 \text{ credit} = \$0 \text{ tax due}$
- **Quarter 3:**  $\$650 \times 1\% = \$6.50 \rightarrow \$6.50 - \$10 \text{ credit} = \$0 \text{ tax due}$

- **Quarter 4:**  $\$650 \times 1\% = \$6.50 \rightarrow \$6.50 - \$10 \text{ credit} = \$0 \text{ tax due}$

**Total tax due for the year: \$0**

BUT:

- **Because gross income exceeds \$2,500**, taxpayer is **not exempt under § 17A** and **still must file returns**.
- **Quarterly credits** reduce liability to zero—but that’s not the same as being **exempt** under § 17A.

**Return is required**, because the person is over the \$2,500 threshold, even if no tax is ultimately due after credits.

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### 3. Taxpayer with \$10,000 Gross Income for the Tax Year

Income spread equally: \$2,500/quarter

Assume same 1.00% tax rate.

#### Step-by-Step:

- **Quarter 1:**  $\$2,500 \times 1\% = \$25.00 \rightarrow \$25.00 - \$10 \text{ credit} = \$15.00 \text{ tax due}$
- **Quarter 2:**  $\$25.00 - \$10 = \$15.00$
- **Quarter 3:**  $\$25.00 - \$10 = \$15.00$
- **Quarter 4:**  $\$25.00 - \$10 = \$15.00$

**Total annual tax due: \$60.00**

- Not exempt under § 17A (gross income exceeds \$2,500)
- Quarterly credits apply and reduce liability
- Full returns must be filed and tax paid quarterly or annually

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### Takeaways for Drafting § 15 Language

The way § 15 is currently written could **accidentally suggest** the quarterly credit should be applied **even when no tax is due** under § 17A. That’s why this clarifying language helps:

*The exemption provided in § 17A... shall apply in addition to the quarterly credit... However, if a taxpayer qualifies for the exemption in § 17A, no tax shall be due, and the quarterly credit shall not be applied or carried forward for that tax year.*

This wording ensures we:

- Treat § 17A as a **complete exemption**, not a “super credit”
- Make it clear **you can’t “stack” § 15 and § 17A**
- Avoid future arguments that a taxpayer with \$2,400 should get a **credit to carry forward or refund**