

Chapter 18 BUSINESSES AND BUSINESS REGULATIONS ^[1]

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ARTICLE II. - BUSINESS LICENSING

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FOOTNOTE(S):

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State Law reference— Business and occupation privilege tax, W. Va. Code, § 8-13-5.

ARTICLE I. IN GENERAL

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Secs. 18-1—18-18. Reserved.

ARTICLE II. BUSINESS LICENSING

DIVISION 1. - GENERALLY

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DIVISION 1. GENERALLY

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Sec. 18-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means and includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, either direct or indirect.

Business franchise registration certificate means a franchise or certificate, issued by or on behalf of the state, authorizing a person to conduct business within the state and when referred to in this article as certificate or registration, shall mean business franchise registration certificate.

License year means the fiscal year beginning July 1 and ending June 30.

Person means and includes any individual, firm, copartnership, joint adventure, association, corporation, or any other group or any other combination acting as a unit, responsible for payment of the fees imposed herein, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

Profession or occupation means and includes all persons herein classed within a named profession or occupation, but shall not include any individual acting as an employee of another for hire, but shall include agents and solicitors.

Recorder means the financial agent responsible for the collection and issuance of said business license. This person shall also maintain accurate records of such.

Wholesaler or jobber applies only to a person doing a regularly organized wholesale or jobbing business known to the trade as such, selling to retail merchants or jobbers or to others, in wholesale quantities and at wholesale prices.

(Ord. No. 2002-01, § 8-101, 6-18-2002)

Sec. 18-20. License required.

- (a) It shall be unlawful for any person to conduct within the town any business, profession, calling or vocation for which a town license is required by this article or elsewhere in this Code, or for which a business franchise registration certificate or any other form of state license is required by law without first obtaining from the town such town license as may be required thereof, and each person so licensed by the town shall pay such town license tax or fee as may be imposed thereon by the town and maintain such town license in a currently valid status at all times while conducting the business, profession, calling or vocation to which such town license relates.
- (b) This section is a regulatory measure, and is implemented for the purpose of identifying owners and operators of businesses within the city limits, accounting for the type of business being conducted within the city, and assisting in determining that such businesses, trades and occupations are in compliance with the applicable provisions of this Code. The funds

received from the payment of the license fee contributes to the implementation of this regulatory function.

(Ord. No. 2002-01, § 8-102, 6-18-2002)

Sec. 18-21. Application for license.

- (a) Every person coming within the requirements of this article shall make application, in writing, upon a form to be furnished by the town, to the recorder, on or before July 1, in each tax year. Such form shall set forth the name of the person, the location of his place of business, profession or occupation, the character thereof, whether the person is engaged in more than one tax table business, the nature of such additional business and where located, and any other information required by the recorder to enable him to determine the amount of tax to be paid.
- (b) Upon payment to the recorder of such license tax or fee as may be imposed by this article or elsewhere in this Code for the particular town license for which application is made, the recorder shall issue the license applied for; provided that the application is in proper form and that all requirements of state law and the provisions of this Code appear to have been complied with, and provided further, that applications for licenses which are required to be placed before the common council at its next meeting succeeding the date of filing thereof, and he shall not issue any such license until authorized to do so by the common council.
- (c) The recorder shall maintain on file all applications for town licenses and a record of each license issued which shall set forth the name and business address of the licensee, the date of issuance and the term for which issued, the type of license, the amount of license tax or fee paid, the number of the license, and such additional information as may be pertinent to establish that all requirements of law and this Code have been complied with.

(Ord. No. 2002-01, § 8-103, 6-18-2002)

Sec. 18-22. Expiration date; annual renewal, advance payment of fee.

- (a) Town licenses shall expire at 12:00 midnight on June 30, subsequent to the date of issuance and shall be renewed annually, except as provided for such licenses for which the tax or fee is by the day, week, month or other period less than a year, and except as may be provided elsewhere in this Code.
- (b) The annual fee required by this article shall be paid in one annual payment, payable in advance, on July 1 of each year.

(Ord. No. 2002-01, § 8-104, 6-18-2002)

Sec. 18-23. Proration of fees.

The license tax or fee for an initial license upon the commencement of business shall be prorated in the following manner: All licenses granted prior to January 1 shall be charged the full amount of such license tax or fee and all licenses granted after January 1 shall be charged one-half of the full license tax or fee. No license, however, shall be issued for less than \$2.00.

(Ord. No. 2002-01, § 8-105, 6-18-2002)

Sec. 18-24. False statements prohibited.

It shall be unlawful for any person to knowingly make any false statement in any application for a town license, or in any tax return, report or other statement relating to any activity licensed by the town and which is required to be made to any officer or agency.

(Ord. No. 2002-01, § 8-106, 6-18-2002)

Sec. 18-25. Separate license for separate businesses.

Any person doing business at more than one place shall be required to take out a separate license for each of such places; and each of such places shall constitute a separate and distinct place of business; and the operator thereof shall pay a license fee therefor as provided for under this article.

(Ord. No. 2002-01, § 8-107, 6-18-2002)

Sec. 18-26. Separate fee for separate business classifications.

Any person engaging in more than one of the classes of business for which a license fee is required under this article shall, unless otherwise provided, be liable for the license fee herein provided for each of such classes of business.

(Ord. No. 2002-01, § 8-108, 6-18-2002)

Sec. 18-27. Display of license.

Each person to whom a town license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry his license upon his person at all times while engaging in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom he is transacting business or any law enforcement officer.

(Ord. No. 2002-01, § 8-109, 6-18-2002)

Sec. 18-28. License a personal privilege, not assignable; change of name, location, ownership, etc.

- (a) Each town license shall confer a personal privilege only, to transact the business, profession, calling or vocation which is the subject of the license, and shall not be exercised except by the person holding the same and shall not be assignable to any other person.
- (b) Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest shall be considered a cessation of the business and a new town license shall be required. Changes of partners or members of firms or officers of a corporation shall not require a new license to be issued.

(Ord. No. 2002-01, § 8-110, 6-18-2002)

Sec. 18-29. Payment of fees.

All remittances of fees imposed under this article shall be made in cash or by check to the town, or its agent, at the municipal center.

(Ord. No. 2002-01, § 8-111, 6-18-2002)

Sec. 18-30. Issuance of license.

Upon filing of a license application and the payment by the person of the required amount of fee, the city shall issue a license to the person authorizing him, for a period of the year, to engage

in and conduct the business, profession, or occupation there named. The form of such license shall be prepared by the city.

If the license applicant is in arrears to the Town of Bath/Berkeley Springs Water Works for previously unpaid fees, a provisional license may be granted for a period of 90 days. After the provisional term, a regular business license will be issued for the duration of the annual term provided that all current and outstanding fees have been paid. If these fees have not been collected, section 18-32 of this article will be immediately implemented and could include suspension and/or revocation of the business license.

(Ord. No. 2002-01, § 8-112, 6-18-2002; Ord. No. 2014-04, 8-19-2014)

Sec. 18-31. License does not legalize unlawful acts.

Nothing in this article, and no payment for or issuance of any town license under the provisions hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from any penalty prescribed for such violation.

(Ord. No. 2002-01, § 8-113, 6-18-2002)

Sec. 18-32. Suspension and revocation of licenses, and public hearings upon appeal from revocation.

The recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, for violation of any pertinent provision of state law or other ordinances, or for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the licensee, without prejudice to prosecution of such licensee by the town. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the recorder to further investigate the grounds for revocation and to reconsider his action, and if the recorder accedes to such request he may suspend or reinstate the license pending his final decision. If the recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to the common council, which shall, without delay, afford such person a public hearing at which he may appear in person or by counsel, and may have the attendance of witnesses, books and papers in his behalf, and may testify in person. The decision of the common council following such hearing shall be final, subject only to such judicial review as may be provided by law.

(Ord. No. 2002-01, § 8-114, 6-18-2002)

Sec. 18-33. Criminal violations and penalties.

Except as may herein be expressly provided, any person violating any provisions under this article shall, upon conviction thereof, be fined not less than \$50.00 nor more than \$100.00, or imprisoned in the county jail not more than 30 days or both fined and imprisoned, and each day or part thereof that any violation shall continue shall be deemed to constitute a distinct and separate offense and be punishable accordingly.

(Ord. No. 2002-01, § 8-115, 6-18-2002)

Sec. 18-34. Prosecution for violations; recourse of town to seek injunctions.

If any person engages in or prosecutes any business, profession, calling or vocation contrary to any of the provisions of this article, or by any violation of the terms and conditions of such license, he shall be subject to immediate prosecution.

(Ord. No. 2002-01, § 8-116, 6-18-2002)

Secs. 18-35—18-56. Reserved.

DIVISION 2. LICENSING OF CERTAIN BUSINESSES

Sec. 18-57. License fee schedule.

Sec. 18-58. Festival license.

Secs. 18-59—18-89. Reserved.

Sec. 18-57. License fee schedule.

- (a) In accordance with the memorandum received from the state department of tax and revenue, dated March 19, 1993, (Revised License Chart) and changes provided for by the West Virginia Code, the town shall incorporate the following fee schedule, and from this date forward impose the said fees in accordance with the West Virginia Code section applicable.
- (b) The fees imposed by this article, unless otherwise revised pursuant to state law, shall apply to the following respective classifications:

Classification	Fee
ALCOHOLIC LIQUORS	
(W. Va. Code, § 60-3A-12(a))	
Retail Liquor Sales (Class A/Class B)	\$1,000.00
(W. Va. Code, § 60-7-6)	
Fraternal or veterans organization, nonprofit social club	\$375.00
Private club	
Less than 1,000 members	\$500.00
More than 1,000 members	\$1,250.00
NONINTOXICATING BEER	
(W. Va. Code, § 11-16-9)	
Class A - Retail dealer (restaurants, bars, and fraternal organizations)	\$150.00
Class B - Grocery store, chilled and unchilled	\$150.00
Distributor	\$1,000.00
Brewer	\$1,500.00
WINE	
(W. Va. Code, § 60-8-3)	
Retailers (grocer)	\$150.00

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	Distributors	\$2,500.00
	Wine tasting	\$50.00
	Wine sales representative	\$50.00
	AMUSEMENT OR MUSIC DEVICES	
	(W. Va. Code, § 11-12-3)	
	Less than 20:	
	.01 device, each device	\$2.00
	.05 device, each device	\$5.00
	.10 device, each device	\$10.00
	.10 plus device, each device	\$12.50
	More than 20:	
	.01 device	\$50.00
	.05 device	\$150.00
	.10 device	\$225.00
	.10 plus device	\$300.00
	ARCHITECTS	
	(W. Va. Code, § 30-12-8)	\$25.00
	ATTORNEYS	
	(W. Va. Code, § 30-1-7)	\$5.00
	AUCTIONEER	
	(W. Va. Code, § 19-2C-6)	\$15.00
	BAGATELLE TABLE	
	(W. Va. Code, § 11-12-14)	
	First	\$25.00
	Each additional table	\$15.00
	BAGGAGE OR PARCEL CHECKING DEVICES VIBRATOR MACHINES AND TOILET LOCKERS, SANITARY NAPKINS	
	(W. Va. Code, § 11-12-3)	\$0.50
	BARBER, BEAUTICIAN, MANICURIST	
	(W. Va. Code, § 30-27-8)	\$25.00
	BARBER, BEAUTICIAN SCHOOL	

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	(W. Va. Code, § 30-27-8)	\$250.00
	BILLIARD OR POOL TABLE/BOWLING ALLEY	
	(W. Va. Code, § 11-12-14)	
	Billiard or pool, first table	\$25.00
	Each additional table	\$15.00
	Bowling alley, first alley	\$25.00
	Each additional alley	\$15.00
	CARNIVALS (Street or Other)/CIRCUSES	
	(W. Va. Code, § 11-12-4)	
	For each performance exhibit or entertainment, per week	\$5.00
	Riding devices/per week	\$10.00
	Concession selling services, goods, food merchandise (per concession/per week)	\$5.00
	Games of skill (per concession/per week)	\$10.00
	Candy or merchandise wheels/per day	\$25.00
	Circuses and other shows:	
	For each railroad car used to transport property or equipment (per day performance is given)	\$4.00
	For each truck used to transport property or equipment (per day performance is given)	\$3.00
	CHIROPRACTORS	
	(W. Va. Code, § 30-16-7)	\$100.00
	COLLECTION AGENCY	
	(W. Va. Code, § 11-12-12)	\$100.00
	CONTRACTORS	
	(W. Va. Code, § 21-11-7)	\$150.00
	DENTAL CORPORATION	
	(W. Va. Code, § 30-4-4c)	\$50.00
	DENTISTS	
	(W. Va. Code, § 30-4-17b)	\$20.00
	EMBALMER AND FUNERAL DIRECTOR	
	(W. Va. Code, § 30-6-6)	\$15.00

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EMPLOYMENT AGENCY	
(W. Va. Code, § 11-12-13)	\$200.00
ENGINEERS	
(W. Va. Code, § 30-13-7)	\$30.00
FORESTERS	
(W. Va. Code, § 30-19-7)	\$5.00
FORTUNETELLING, PALMIST, PHRENOLOGIST, SPIRITUALIST, CLAIRVOYANT, MIND READER, MEDIUM	
(W. Va. Code, § 11-12-6)	\$200.00
FUNERAL ESTABLISHMENT	
(W. Va. Code, § 30-6-13)	\$75.00
HAWKER AND PEDDLER	
(W. Va. Code, § 11-12-8)	
On foot	\$10.00
Vehicle not exceeding ½ ton	\$15.00
Vehicle not exceeding 1 ton	\$50.00
Vehicle not exceeding 2 tons	\$100.00
More than 2 tons	\$150.00
plus, for each additional ton or fraction thereof	\$100.00
HEARING AID FITTERS/DEALERS	
(W. Va. Code, § 30-26-9)	\$40.00
HOSPITALS	
(W. Va. Code, § 16-5B-4)	
5—49 beds	\$20.00
50—99 beds	\$30.00
100—199 beds	\$40.00
200 or more beds	\$50.00
HOTELS/MOTELS/BOARDINGHOUSES	
(W. Va. Code, § 16-6-4)	\$2.00
Each bedroom in excess of 7	\$0.25 up to \$10.00

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INSURANCE AGENT/BROKER		
(W. Va. Code, § 33-12-6)		\$25.00
INSURANCE COMPANY		
(W. Va. Code, § 33-3-13)		\$50.00
ITINERANT VENDORS		
(W. Va. Code, § 11-12-10)		\$500.00
JUNK DEALERS		
(W. Va. Code, § 11-12-7)		
	Resident junk dealer within town limits	\$25.00
	Resident junk dealer/no yard for storing	\$25.00
	Resident junk dealer's agent	\$10.00
	Itinerant junk collector	\$2.00
	Nonresident junk dealer	\$150.00
	Nonresident junk dealer's agent	\$150.00
LAND SURVEYOR		
(W. Va. Code, § 30-13A-6)		\$20.00
LANDSCAPE ARCHITECTS		
(W. Va. Code, § 30-22-7)		\$50.00
LAUNDROMATS/CAR WASH		
(W. Va. Code, § 11-12-3a and W. Va. Code, § 11-13a-2)		
	1—5 devices	\$15.00
	6—9 devices, each	\$3.00
	10 or more devices	\$30.00
MEDICAL CORPORATION (annually)		
(W. Va. Code, § 30-3-5)		\$300.00
MIDWIVES		
(W. Va. Code, § 30-15-5)		\$10.00
NURSING HOME ADMINISTRATOR		
(W. Va. Code, § 30-25-5)		\$50.00
NURSING HOME/PERSONAL CARE HOME		
(W. Va. Code 16-5C-6)		

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	Nursing home/bed	\$8.00
	Personal care homes/bed	\$2.00
	OCCUPATIONAL THERAPIST	
	(W. Va. Code, § 30-28-15)	\$5.00
	OSTEOPATHIC PHYSICIAN/SURGEON	
	(W. Va. Code, § 30-14-10)	\$10.00
	PAWNBROKER	
	(W. Va. Code, § 11-12-9)	\$100.00
	PHYSICAL THERAPIST	
	(W. Va. Code, § 30-20-8)	\$35.00
	PHYSICIANS/SURGEONS/PODIATRIST	
	(W. Va. Code, § 30-3-12)	\$25.00
	PRACTICAL NURSES	
	(W. Va. Code, § 30-7A-7)	\$5.00
	PRIVATE DETECTIVE/INVESTIGATOR	
	(W. Va. Code, § 30-18-4)	\$50.00
	PSYCHOLOGIST	
	(W. Va. Code, § 30-21-8)	\$15.00
	RADIOLOGICAL TECHNOLOGIST	
	(W. Va. Code, § 30-23-7)	\$10.00
	REAL ESTATE BROKER/SALESMAN	
	(W. Va. Code, § 47-12-9)	
	Real estate broker	\$80.00
	Real estate salesman	\$40.00
	REGISTERED PROFESSIONAL NURSE	
	(W. Va. Code, § 30-7-6)	\$5.00
	RESTAURANTS	
	(W. Va. Code, § 16-6-4)	
	Restaurants	\$2.00
	Each 5 chairs/spaces where persons are fed in excess of 10 (\$0.25/section up to \$10.00)	\$2.00

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SOCIAL WORKER		
(W. Va. Code, § 30-30-10)		\$5.00
GENERAL STORES		
(W. Va. Code, ch. 11, art. 13A)		
*The term "general store" shall be construed to mean and include any store or any mercantile establishment, in which goods, wares, or merchandise or any kind are purchased, ordered, sold, or offered for sale either at retail or wholesale.		
	1—5 stores, each	\$15.00
	6—10 stores, each additional store	\$40.00
	11—15 stores, each additional store	\$80.00
	16—20 stores, each additional store	\$120.00
	21—30 stores, each additional store	\$160.00
	31—50 stores, each additional store	\$400.00
SPECIAL STORES		
(W. Va. Code, ch. 11, art. 13A)		
*The term "special store" shall be construed to mean and include any store or any mercantile establishment, in which goods, wares, or merchandise of any kind except cigarettes, tobacco products, and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin-operated device, owned or operated by the store proprietor.		
	1—5 stores, each	\$5.00
	6—10 stores, each additional store	\$20.00
	11—15 stores, each additional store	\$40.00
	16—20 stores, each additional store	\$60.00
	21—30 stores, each additional store	\$80.00
	31—50 stores, each additional store	\$200.00
THEATRES AND PUBLIC SHOWS (Less than 2,000 population)		
(W. Va. Code, § 11-12-11)		\$10.00
TRADING STAMPS		
(W. Va. Code, § 11-12-5)		\$175.00
VENDING MACHINES/MERCHANDISE OR OTHER DEVICES		
(W. Va. Code, § 11-12-3)		

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	Less than 20:	
	.01 device, each device	\$2.00
	.05 device, each device	\$5.00
	.10 device, each device	\$10.00
	.10 plus device, each device	\$12.50
	More than 20:	
	.01 device	\$50.00
	.05 device	\$100.00
	.10 device	\$150.00
	.10 plus device	\$250.00
	VETERINARIAN	
	(W. Va. Code, § 30-10-10)	\$5.00

	License # ____
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TOWN OF BATH
BUSINESS LICENSE APPLICATION
FISCAL YEAR DATE

Application is hereby made, by the undersigned, for a Business License under the provisions of the Town of Bath Business License Ordinance 2002-01 as follows:

Name of Business:	_____	
Applicant's Name	_____	Phone: _____
Address:	_____	

Type of Business:	_____	
TOTAL FEES SUBMITTED WITH THIS APPLICATION:		\$ _____

SCHEDULE OF FEES

ALCOHOLIC LIQUORS		
Retail liquor sales (Class A/Class B)	\$1,000.00	_____ -

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	Fraternal or veterans organization, nonprofit social club	\$375.00	— -
	Private club		
	Less than 1,000 members	\$500.00	— -
	More than 1,000 members	\$1,250.00	— -
	NONINTOXICATING BEER		
	Class A - Retail dealer (restaurants, bars, fraternal organizations)	\$150.00	— -
	Class B - Grocery store, chilled and unchilled	\$150.00	— -
	Distributor	\$1,000.00	— -
	Brewer	\$1,500.00	— -
	WINE		
	Retailers (grocer)	\$150.00	— -
	Distributors	\$2,500.00	— -
	Wine tasting	\$50.00	— -
	Wine sales representative	\$50.00	— -
	AMUSEMENT OR MUSIC DEVICES		
	Less than 20:		
	.01 device, each	\$2.00	— -
	.05 device, each	\$5.00	— -
	.10 device, each	\$10.00	— -
	.10 plus device, each	\$12.50	— -
	More than 20:		

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		.01 device	\$50.00	— -
		.05 device	\$150.00	— -
		.10 device	\$225.00	— -
		.10 plus device	\$300.00	— -
ARCHITECTS			\$25.00	— -
ATTORNEYS			\$5.00	— -
AUCTIONEER			\$15.00	— -
BAGATELLE TABLE				
		First table	\$25.00	— -
		Each additional table	\$15.00	— -
BAGGAGE OR PARCEL CHECKING DEVICES, VIBRATOR MACHINES AND TOILET LOCKERS, SANITARY NAPKINS			\$5.00	— -
BARBER, BEAUTICIAN, MANICURIST			\$25.00	— -
BARBER, BEAUTICIAN SCHOOL			\$250.00	— -
BILLIARD OR POOL TABLE/BOWLING ALLEY				
		Billiard or pool, first table	\$25.00	— -
		Each additional table	\$15.00	— -
		Bowling alley, first alley	\$25.00	— -
		Each additional alley	\$15.00	— -
CARNIVALS (Street or Other)/CIRCUSES				

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	For each performance exhibit or entertainment (per week)	\$5.00	— -
	Riding devices/per week	\$10.00	— -
	Concession selling services, goods, merchandise, food (per week)	\$5.00	— -
	Games of skill (per concession/per week)	\$10.00	— -
	Candy or merchandise wheels/per day	\$25.00	— -
	Circuses and other shows:		
	For each railroad car used to transport property or equipment (per day)	\$4.00	— -
	For each truck used to transport property or equipment (per day)	\$3.00	— -
	CHIROPRACTORS	\$100.00	— -
	COLLECTION AGENCY	\$100.00	— -
	CONTRACTORS	\$150.00	— -
	DENTAL CORPORATION	\$50.00	— -
	DENTISTS	\$20.00	— -
	EMBALMER AND FUNERAL DIRECTOR	\$15.00	— -
	EMPLOYMENT AGENCY	\$200.00	— -
	ENGINEERS	\$30.00	— -
	FORESTERS	\$5.00	— -
	FORTUNE TELLING, PALMIST, PHRENOLOGIST, MEDIUM, CLAIRVOYANT, MIND READER, SPIRITUALIST	\$200.00	— -

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FUNERAL ESTABLISHMENT	\$75.00	— -
HAWKER AND PEDDLER		
On foot	\$10.00	— -
Vehicle not exceeding ½ ton	\$15.00	— -
Vehicle not exceeding 1 ton	\$50.00	— -
Vehicle not exceeding 2 tons	\$100.00	— -
More than 2 tons \$150.00 plus \$100.00 for each additional ton		— -
HEARING AID FITTERS/DEALERS	\$40.00	— -
HOSPITALS		
5—49 beds	\$20.00	— -
50—99 beds	\$30.00	— -
100—199 beds	\$40.00	— -
200 or more beds	\$50.00	— -
HOTELS/MOTELS/BOARDINGHOUSES	\$2.00	— -
Each bedroom in excess of 7	\$0.25 up to \$10.00	— -
INSURANCE AGENT/BROKER	\$25.00	— -
INSURANCE COMPANY	\$50.00	— -
ITINERANT VENDORS	\$500.00	— -
JUNK DEALERS		

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Resident junk dealer within city limits	\$25.00	— -
Resident junk dealer/no yard for storing	\$25.00	— -
Resident junk dealer's agent	\$10.00	— -
Itinerant junk collector	\$2.00	— -
Nonresident junk dealer	\$150.00	— -
Nonresident junk dealer's agent	\$150.00	— -
LAND SURVEYOR	\$20.00	— -
LANDSCAPE ARCHITECTS	\$50.00	— -
LAUNDROMATS/CAR WASH		
1—5 devices	\$15.00	— -
6—9 devices, each	\$3.00	— -
10 or more devices	\$30.00	— -
MEDICAL CORPORATION	\$300.00	— -
MIDWIVES	\$10.00	— -
NURSING HOME ADMINISTRATOR	\$50.00	— -
NURSING HOME/PERSONAL CARE HOME		
Nursing home/bed	\$8.00	— -
Personal care homes/bed	\$2.00	— -
OCCUPATIONAL THERAPIST	\$5.00	— -

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OSTEOPATHIC PHYSICIAN/SURGEON	\$10.00	— -
PAWNBROKER	\$100.00	— -
PHYSICAL THERAPIST	\$35.00	— -
PHYSICIANS/SURGEONS/PODIATRIST	\$25.00	— -
PRACTICAL NURSES	\$5.00	— -
PRIVATE DETECTIVE/INVESTIGATOR	\$50.00	— -
PSYCHOLOGIST	\$15.00	— -
RADIOLOGICAL TECHNOLOGIST	\$10.00	— -
REAL ESTATE BROKER/SALESMAN		
Real estate broker	\$80.00	— -
Real estate salesman	\$40.00	— -
REGISTERED PROFESSIONAL NURSE	\$5.00	— -
RESTAURANTS	\$2.00	— -
Each 5 chairs/spaces where persons are fed in excess of 10 (\$0.25/section up to \$10.00)		— -
SOCIAL WORKER	\$5.00	— -
GENERAL STORES		
*The term "general store" shall be construed to mean and include any store or any mercantile establishment, in which goods, wares, or merchandise or any kind are purchased, ordered, sold, or offered for sale either at retail or wholesale.		
1—5 stores (each)	\$15.00	— -

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	6—10 stores (each additional store)	\$40.00	— -
	11—15 stores (each additional store)	\$80.00	— -
	16—20 stores (each additional store)	\$120.00	— -
	21—30 stores (each additional store)	\$160.00	— -
	31—50 stores (each additional store)	\$400.00	— -
SPECIAL STORES			
	*The term "special store" shall be construed to mean and include any store or any mercantile establishment, in which goods, wares, or merchandise of any kind except cigarettes, tobacco products, and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin-operated device, owned or operated by the store proprietor.		
	1—5 stores (each)	\$5.00	— -
	6—10 stores (each additional store)	\$20.00	— -
	11—15 stores (each additional store)	\$40.00	— -
	16—20 stores (each additional store)	\$60.00	— -
	21—30 stores (each additional store)	\$80.00	— -
	31—50 stores (each additional store)	\$200.00	— -
	THEATRES AND PUBLIC SHOWS (less than 2,000 population)		\$10.00 — -
	TRADING STAMPS		\$175.00 — -
VENDING MACHINES/MERCHANDISE OR OTHER DEVICES			
	Less than 20:		
	.01 device, each device	\$2.00	— -

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	.05 device, each device	\$5.00	— -
	.10 device, each device	\$10.00	— -
	.10 plus device, each device	\$12.50	— -
	More than 20:		
	.01 device	\$50.00	— -
	.05 device	\$100.00	— -
	.10 device	\$150.00	— -
	.10 plus device	\$250.00	— -
	VETERINARIAN	\$5.00	— -

(Ord. No. 2002-01, §§ 8-201—8-258, 6-18-2002)

Sec. 18-58. Festival license.

- (a) Any organization or individual staging an event selling food and/or merchandise within the town corporate limits shall require council approval and shall pay a single per-event cover fee for all vendors participating within the agreed-upon boundaries of the event.
- (b) Such fee, payable by the sponsoring organization or individual, and due within 30 business days from the close of the event, will be one percent of the event's actual gross sales, said fee not to be in excess of \$2,000.00. In the specific instance of the annual Apple Butter Festival, sponsored by the Berkeley Springs, Morgan County Chamber of Commerce, the fee shall be \$2,000.00.
- (c) Those vendors operating outside of the event boundaries, but within the town corporate limits, shall require a license from the town, obtainable from the town hall. Food vendor licenses shall, in accordance with state mandate, not exceed \$5.00 and merchandise vendor licenses shall be \$15.00 per event. Violators of this section will be subject to a penalty of \$100.00 fine or immediate expulsion.
- (d) Those merchants holding valid yearly business licenses from the town, and conducting routine business at their permanent business locations during any such event, shall be exempt from any additional licensing or fees payable to the town, whether inside or outside of the event boundaries.

(Ord. of 12-15-1997)

Secs. 18-59—18-89. Reserved.

ARTICLE III. PAWNBROKERS

Sec. 18-90. Purpose.

Sec. 18-91. Definitions.

Sec. 18-92. License required.

Sec. 18-93. License denial, suspension or revocation.

Sec. 18-94. Appeals.

Sec. 18-95. Required records and reports.

Sec. 18-96. Disposition of stolen property.

Sec. 18-97. Retention of secondhand personal property.

Sec. 18-98. Minors.

Sec. 18-99. Right of inspection.

Sec. 18-100. Penalties.

Secs. 18-101—18-128. Reserved.

Sec. 18-90. Purpose.

The purpose of this article is to promote the safety and welfare of the citizens of the town, by prescribing procedures which will assist in the reduction of burglaries and thefts by curtailing the disposition of certain stolen property and which will assist in identifying that stolen property so that it may be returned to its owners.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-91. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police means the chief of police of the Town of Bath Police Department.

Purchaser means any person, individual, corporation, business trust, partnership association, or two or more persons having a joint or common business interest or any other legal or commercial entity engaged in the business of receiving, obtaining, purchasing, receiving as a pawnbroker, or selling secondhand property in the town, or having his place of business for receiving, purchasing, obtaining, receiving as a pawnbroker, or selling secondhand personal property located in the town, whether that person is acting in his own behalf or as an agent, servant, or employee of another.

Secondhand personal property.

(1) The term "secondhand personal property" means any of the following, subject to the exceptions (exemptions) set forth below, if previously owned by a consumer or collector, or not obtained or purchased from a merchant in the usual and ordinary course of business:

- a. Any of the following metals, any coins made principally of such metals, and any personal property made in whole or in part of gold, silver, platinum, iridium,

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palladium, ruthenium, rhodium, osmium in pure or alloyed form, including silverware and silver-plated items;

- b. Jewelry, precious and semi-precious stones;
 - c. Binoculars, watches and cameras;
 - d. Television sets, radio and stereo equipment;
 - e. Musical instruments;
 - f. Typewriters, check writing machines, adding machines, and office equipment;
 - g. Coins or coin collections, or money when not used as the medium for payment;
 - h. Any and all personal property;
 - i. Guns, firearms.
- (2) Exemptions from the definition. The term "secondhand personal property," as defined and implemented in this section, shall not include the following:
- a. Personal property which is subject to and has been issued a title under the provisions of the laws of this state or any other state.
 - b. Personal property purchased from or sold to a retail or wholesale dealer of such personal property in the ordinary course of business.
 - c. Personal property sold at a yard sale.
 - d. Personal property purchased or sold by nonprofit or charitable corporations, service clubs, and organizations.
 - e. Items belonging to, made in, or typical of an earlier period or an object having special value because of its age; namely antiques. Secondhand dealer exemptions are to include antique dealers.
 - f. Items given over to the care of another; entrust, for resale with the intent of profiting from a share of the sale, namely consignment. Consignment shops are exempt.

Town mayor means the town administrator.

Transaction means to carry on or to conduct business or a business deal, including the buying, selling, or trading of secondhand personal property.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-92. License required.

- (a) It shall be unlawful for any person to engage in the barter, trade or purchase of any secondhand personal property unless such person has obtained a license from the town.
- (b) A statement that the applicant authorizes any police officer to inspect the records of purchases and sales, of the business during regular business hours, provided the police officer states what items of personal property he is looking for.
- (c) A purchaser of secondhand personal property shall conduct said business only from the fixed permanent location as specified in the application for the license, which fixed permanent location shall be other than a motel or hotel room generally used by transients, and other than a motor vehicle, mobile home, or trailer, unless said vehicle or trailer is permanently affixed to the real estate.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-93. License denial, suspension or revocation.

Upon receipt of any application, the clerk shall forward it to the chief of police or his designee who shall conduct an investigation of the background of the applicant. The council may refuse to grant a license to any applicant, or may suspend, revoke or refuse to renew the license of any licensed purchaser if the police investigation reveals that any of the following has occurred:

- (1) The applicant or purchaser has violated any provisions of this article;
- (2) A similar license issued to the applicant or licensed purchaser has been suspended or revoked, or has been refused, in another jurisdiction;
- (3) The applicant or licensed purchaser has been convicted of a felony or theft offense within the five years immediately prior to the submission of any application or request for renewal of a license in the city.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-94. Appeals.

Before revoking, suspending or refusing to grant or renew any license, the town council shall afford the applicant or purchaser of secondhand personal property an opportunity to show cause why his license should not be refused, revoked or suspended at an informal conference to be held by the mayor if so requested by the applicant or purchaser within 15 days of receipt of written notice of the council's proposed action.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-95. Required records and reports.

- (a) A purchaser shall record each purchase involving secondhand personal property and the following information shall be required:
 - (1) The name of the person selling and/or delivering secondhand personal property to the purchaser;
 - (2) The date of the purchase;
 - (3) The valid driver's license number or age-of-majority identification number from any credit card or identification card (including the name of the type of card from which the identification number is taken) of the person selling the secondhand personal property, or a legible thumbprint;
 - (4) The name of the person making the record entry;
 - (5) A description of the item purchased by the licensed purchaser, including but not limited to, a description of the metallic composition, any jewels, stones, or glass, and a listing of all numbers, marks, monograms, trademarks, manufacturers' names, serial numbers, and any other marks of identification appearing on the items;
 - (6) Evidence of obliteration, defacing, removal, alteration, or covering of any numbers, marks, monograms, trademarks, manufacturers' names, serial numbers, or any other marks of identification on the item;
 - (7) The consideration paid for the item.
- (b) The purchaser shall report all the information required by this section in writing to the chief of police, Town of Bath Police Department within 96 hours of the purchase.
- (c) The information required by this section shall be preserved as a record for a period of not less than three years.

- (d) All items sold are required to be documented by a receipt with the name and address of the buyer.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-96. Disposition of stolen property.

If any law enforcement officer has probable cause or a reasonable belief that secondhand personal property located in a purchaser's premises is stolen property, the purchaser shall release said property to the officer upon demand and upon receiving a receipt for the property from the officer.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-97. Retention of secondhand personal property.

- (a) A purchaser may not melt, change, take apart, destroy, barter, trade, transfer or sell any secondhand personal property items or obliterate identification marks, or dispose of any secondhand personal property purchased or otherwise obtained by a purchase until ten calendar days have elapsed from the date of purchase of the secondhand personal property.
- (b) All secondhand personal property obtained by a purchaser shall be stored at the business location in the town where it was purchased, until ten calendar days have elapsed from the date of purchase of the item of secondhand personal property.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-98. Minors.

A purchaser shall not purchase or obtain any secondhand personal property from any person under 18 years of age, unless the person is accompanied by a parent or legal guardian. The purchaser or purchaser's employee shall obtain from the parent or guardian of the minor and from the minor all of the information required by section 18-95.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-99. Right of inspection.

Any law enforcement officers are hereby authorized to inspect the records of purchases and sales of any purchaser at any time when such purchasers are open for the transaction of business provided that the law enforcement officer first states to the purchaser what items of personal property he is looking for.

(Ord. No. 2003-06, 10-6-2003)

Sec. 18-100. Penalties.

- (a) Any purchaser violating any provisions of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed \$300.00. Each day that a violation continues shall be a separate offense.
- (b) Any purchaser convicted of a violation of this article, or any purchaser who pleads guilty to a violation of this article, shall be subject to having his license to do business within the town revoked.

(Ord. No. 2003-06, 10-6-2003)

Secs. 18-101—18-128. Reserved.

ARTICLE IV. AMUSEMENT TAX ^[2]

DIVISION 1. - GENERALLY

DIVISION 2. - PROCEDURE FOR ASSESSMENT AND COLLECTION

FOOTNOTE(S):

--- (2) ---

State Law reference— Amusement tax, W. Va. Code, § 8-13-5.

DIVISION 1. GENERALLY

Sec. 18-129. Imposed; rate of tax.

Sec. 18-130. Exempted.

Sec. 18-131. Record of tickets sold; monthly payment.

Secs. 18-132—18-149. Reserved.

Sec. 18-129. Imposed; rate of tax.

Every person operating the business of theatrical exhibitions, public shows, moving picture shows, whether indoors or outdoors, hypnotic exhibitions, and all other performances to which admission is obtained by payment of money or other reward shall pay unto the town treasurer an amusement tax of \$0.01 on every admission ticket sold, which tax shall be collected from the purchaser of the ticket by the person selling the ticket; and the tax hereby imposed is in addition to the license tax imposed by this chapter.

(Code 1981, § 8-2A01)

Sec. 18-130. Exempted.

The provisions of this article shall not apply to performances sponsored by churches, charitable, civic, patriotic or religious associations, schools or academic institutions.

(Code 1981, § 8-2A02)

Sec. 18-131. Record of tickets sold; monthly payment.

Every person subject to the tax imposed by this article shall keep a record of the number of admission tickets sold in each month, and shall display to the town treasurer the original books of entry, showing the number of tickets sold, when demanded to do so. Collections made in any month shall be paid over to the town treasurer on or before the tenth of the next succeeding month.

(Code 1981, § 8-2A03)

Secs. 18-132—18-149. Reserved.

DIVISION 2. PROCEDURE FOR ASSESSMENT AND COLLECTION

Sec. 18-150. Mathematical errors; collection of balance due on return without a remittance.

Sec. 18-151. Assessment.

Sec. 18-152. Notice of assessment; petition for reassessment.

Sec. 18-153. Hearing procedure.

Sec. 18-154. Appeals.

Sec. 18-155. Collection.

Sec. 18-156. Liens.

Sec. 18-157. Distraint.

Sec. 18-158. Overpayments; credits; refunds and limitations.

Sec. 18-159. Limitations on assessment.

Sec. 18-160. Limitations on collection.

Sec. 18-161. Interest.

Sec. 18-162. Additions to tax.

Sec. 18-163. Penalties.

Sec. 18-150. Mathematical errors; collection of balance due on return without a remittance.

- (a) *Mathematical error.* When it appears to the recorder that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), the recorder shall correct such error and notify the taxpayer, in writing, of the deficiency in tax. The taxpayer shall have 15 days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within 15 days, the recorder shall make an assessment of such deficiency in accordance with section 18-151 and shall give the taxpayer written notice thereof.
- (b) *Collection of balance due.* If a taxpayer files a mathematically correct return which reflects a balance due of the tax administered under this article and article II of this chapter, and if full payment thereof has not been made, the recorder shall notify the taxpayer, in writing, of the amount of tax, additions to tax, penalties or interest due. The taxpayer shall have 15 days after receipt of such notice within which to make payment. If the taxpayer fails to make payment within such 15-day period, the recorder shall proceed under section 18-155 to collect the amount due.

(Code 1981, § 8-301(A))

Sec. 18-151. Assessment.

- (a) *Generally.* If the recorder believes that the tax administered under this article and article II of this chapter has been insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax, or has failed to make a return, or has made a return which is

incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability and make an assessment therefor.

- (b) *Jeopardy assessments.* If the recorder believes that the collection of the tax administered under this article and article II of this chapter will be jeopardized by delay, he shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall immediately be due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within 20 days after service of notice of the jeopardy assessment, such assessment shall become final. Provided that upon written request of the taxpayer made within such 20-day period, showing reasonable cause therefor, the recorder may grant an extension of time not to exceed 30 additional days within which such petition may be filed. If a taxpayer against whom a jeopardy assessment has been made petitions for reassessment or requests an extension of time to file a petition for reassessment, the petition or request shall be accompanied by such security as the recorder may deem necessary to insure compliance with the applicable provisions of this division. If such petition for reassessment is filed, accompanied by the necessary security, the provisions for hearing, determination and appeal set forth in sections 18-153 and 18-154 shall then be applicable.
- (c) *Abatement or amendment of assessment.* The recorder may abate or amend, in whole or in part, any assessment whenever he ascertains that such assessment is improper or incomplete in any material respect.

(Code 1981, § 8-301(B))

Sec. 18-152. Notice of assessment; petition for reassessment.

The recorder shall give the taxpayer written notice of any assessment or amended assessment made pursuant to this division. Unless the taxpayer to whom a notice of assessment, or amended assessment, is given shall, within 60 days after service thereof (except in the case of jeopardy assessments, as to which the time for filing a petition is specified in section 18-154, either personally or by certified mail, file with the recorder a petition 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 assessment or amended assessment shall become final and not subject to either administrative or judicial review under the provisions of sections 18-153 and 18-154. The amount of an assessment or amended assessments shall be due and payable on the day following the date upon which the assessment or amended assessment becomes final.

(Code 1981, § 8-301(C))

Sec. 18-153. Hearing procedure.

- (a) When a petition for reassessment provided for in section 18-152, or a petition for refund or credit provided for in section 18-158, is filed within the time prescribed by said sections for such filing, or a hearing is requested pursuant to the provisions of any other sections of this division, the recorder shall assign a time and place for a hearing upon the same 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 filing the petition or other written request for hearing unless continued by agreement of the parties or by the recorder for good cause.
- (b) The hearing shall be informal and shall be conducted in an impartial manner by the recorder or a hearing examiner designated by him. If the hearing is on a petition for reassessment the burden of proof shall be upon the taxpayer to show the assessment is incorrect and contrary to law, either in whole or in part. If the hearing is on a petition for refund or credit, the petitioner shall also have the burden of proof.

- (c) After any hearing as provided for, the recorder shall, within a reasonable time, give notice in writing of his decision. Unless an appeal from the decision of the recorder rendered in any such hearing is taken, pursuant to the provisions of this section, within 60 days after service of such notice the recorder's decisions shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, due the town under such decision shall be due and payable on the day following the date upon which such decision becomes final. The amount, if any, due the taxpayer under such decision shall be promptly refunded, or the same may be credited pursuant to section 18-158.

(Code 1981, § 8-301(D))

Sec. 18-154. Appeals.

- (a) *Right of appeal.* A taxpayer may appeal the administrative decision of the recorder issued under section 18-153 or 18-158, by taking an appeal to the magistrate court within 60 days after being served with notice of the administrative decision.
- (b) *Venue.* The appeal may be taken in the magistrate court of the county in which the municipality is situated.
- (c) *Petition for appeal.* The appeal proceeding shall be instituted by filing a petition with the magistrate court, or the magistrate thereof in vacation, within the 60-day period prescribed in subsection (a) of this section. The clerk of the magistrate court shall, within ten days after date the petition is filed, serve the recorder with a copy of the same by registered or certified mail. This petition shall be in writing, verified under oath by the taxpayer, or his duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for such objections.
- (d) *Appeal bond.* Before the appeal is heard, the taxpayer shall file with the clerk of the magistrate court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in the state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the recorder. Notwithstanding the foregoing and in lieu of such bond, the recorder may, upon a sufficient showing by the taxpayer, certify to the clerk of the magistrate court that the assets of the taxpayer subject to the lien imposed by section 18-156, or other indemnification, are adequate to secure performance of the orders of the court.
- (e) *Appeal.* The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the recorder. In such appeal a certified copy of the recorder's notice of assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article and article II of this chapter. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of the court with the recorder who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the recorder to the circuit court of the county.

(Code 1981, § 8-301(E))

Sec. 18-155. Collection.

- (a) *Generally.* The recorder shall collect the tax, additions to tax, penalties and interest imposed by this article and article II of this chapter. In addition to all other remedies available for the collection of debts due the town, the recorder may precede by foreclosure of the lien provided in sections 18-156 and 18-157.
- (b) *Payment when person sells out or quits business; lien.*

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- (1) If any person subject to the tax administered under this article and article II of this chapter sells out his business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and interest imposed by this article and article II of this chapter shall become due and payable immediately and such person shall, within 30 days after selling out his business or stock of goods or ceasing to do business, make a final return and pay any tax which may be due. The unpaid amount of any such tax shall be a lien upon the property of such person.
 - (2) The successor in business of any such person shall withhold so much of the purchase money as will satisfy the tax, additions to tax, penalties and interest which may be due until the former owner shall produce a receipt from the recorder evidencing the payment thereof. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided above, and if any such tax, additions to tax, penalties and interest remain unpaid after expiration of the 30-day period allowed for payment thereof, the purchaser shall be personally liable for the payment of any such tax, additions to tax, penalties and interest and the same shall be recoverable by the recorder by action as provided by this division.
- (c) *Injunction.* If the taxpayer fails for a period of more than 60 days to fully comply with any of the provisions of this division or of any other section of this division to which this section is applicable, the recorder may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in the town until the taxpayer fully complies with the provisions of this division.
- (d) *Costs.* In any proceeding under this division, upon judgment or decree for the town it shall be awarded its costs.

(Code 1981, § 8-301(F))

Sec. 18-156. Liens.

- (a) *Generally.* The tax, additions to tax, penalties or interest due and payable under this article and article II of this chapter or to which this division is applicable shall be a debt due the town. It shall be a personal obligation of the taxpayer and shall be a lien upon the real and personal property of the taxpayer.
- (b) *Duration of lien.* The lien created by this section shall continue until the liability for the tax, additions to tax, penalties and interest is satisfied or becomes unenforceable by reason of lapse of time.
- (c) *Recordation.* The lien created by this section shall be subject to the restrictions and conditions embodied in W. Va. Code, § 38-10C-1 et seq., and any amendment made or which may hereafter be made thereto.
- (d) *Release.* The recorder, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien.

(Code 1981, § 8-301(G))

Sec. 18-157. Distraint.

If the tax administered under this article and article II of this chapter is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the recorder and notice thereof is given as required by this division and such

assessment has become final and is not subject to administrative or judicial review, the recorder may issue a warrant directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property, including intangibles represented by negotiable evidences of indebtedness, of the taxpayer owning the same found within his county for the payment of the amount of all taxes, additions to tax, penalties and interest accrued and unpaid under this article and article II of this chapter or to which this division is applicable. A sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all additions to tax collected over and above the principal amount of tax, penalties and interest due, but in no case shall such compensation exceed \$100.00. The sheriff shall return such warrant to the recorder and pay to him the money collected by virtue thereof by the time specified in the warrant, but not later than 60 days from the date of such warrant. In the discretion of the recorder, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the town and in the execution thereof such officer or employee shall have all powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of all reasonable and necessary expenses actually paid in the performance of such duty. If a warrant is returned not satisfied in full, the recorder may proceed to enforce the claim for taxes by civil action.

(Code 1981, § 8-301(H))

Sec. 18-158. Overpayments; credits; refunds and limitations.

- (a) *Refunds or credits of overpayments.* In the case of overpayment of the tax, additions to tax, penalties or interest imposed by this article and article II of this chapter or to which this division is applicable, the recorder shall, subject to the provisions of this division, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for such tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section 18-160.
- (b) *Claims for refund or credit.* No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the recorder. A person against whom an assessment or an administrative decision has become final shall not be entitled to file a claim for refund or credit with the recorder as prescribed herein. The recorder shall determine the taxpayer's claim and notify the taxpayer in writing of his determination.
- (c) *Petition for refund or credit hearing.* If the taxpayer is not satisfied with the recorder's determination of his claim for refund or credit, or if the recorder has not determined the taxpayer's claim within 90 days after such claim was filed, or six months in the case of claims for refund or credit of the taxes, after the filing thereof, the taxpayer may file with the recorder either personally or by certified mail, a petition for refund or credit; provided that no petition for refund or credit may be filed more than 60 days after the taxpayer is served with notice of denial of his claim. The petition for refund or credit shall be in writing, verified under oath by the said taxpayer or his duly authorized agent having knowledge of the facts, and shall set forth with particularity the items of the determination objected to, together with the reasons for the objections. Then a petition for refund or credit is properly filed, the procedures for hearing and for decision prescribed in section 18-153 shall be followed.
- (d) *Appeal.* An appeal from the recorder's decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that set forth in section 18-154 relating to an appeal from the recorder's decision on a petition for reassessment, but no bond shall be required of the taxpayer.
- (e) *Decision of the court.* Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.
- (f) *Refund made or credit established.* The recorder shall promptly issue his requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of the tax administered under this article and article II of this chapter. The treasurer shall pay such amount out of the fund into which the amount so refunded was originally paid.

- (g) *Forms for claim for refund or a credit; where return shall constitute claim.* The recorder may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by this article and article II of this chapter, a return signed by the taxpayer which shows on its face that an overpayment of such tax has been made shall constitute a claim for refund or a credit.
- (h) *Remedy exclusive.* The procedure provided by this section shall constitute the sole method of obtaining any refund or any credit.
- (i) *Erroneous refund or credit.* If the recorder believes that an erroneous refund has been made or an erroneous credit has been established he may proceed to investigate and may make an assessment or institute civil action to recover the amount of such refund or credit.
- (j) *Limitation on claims for refund or credit.*
 - (1) *General rule.* Whenever a taxpayer claims to be entitled to a refund or credit of any tax, additions to tax, penalties or interest paid into the treasury of the town, such taxpayer shall, except as provided in subsection (c) of this section, file his claim within three years after the due date of the return in respect of which the tax was imposed or within two years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid, and not thereafter.
 - (2) *Extension of time for filing claim by agreement.* The recorder and the taxpayer may enter into written agreement to extend the period but shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.
 - (3) *Special rule where agreement to extend time for making an assessment.* Notwithstanding subsections (j)(1) and (2) of this section, if an agreement is made under the provisions of section 18-159 extending the time period in which an assessment of a tax can be made, then the time period for filing a claim for refund or credit for an overpayment of the same tax made during the periods subject to assessment under the extension agreement shall also be extended for the period of the extension agreement plus 90 days.
 - (4) *Expiration of determination of liability.* Notwithstanding subsections (j)(1) and (2) of this section, in the event of a final administrative or judicial determination of a deficiency in the taxpayer's liability for the tax imposed the period of limitation upon claiming a refund reflecting such final determination in the taxes imposed shall not expire until six months after such final determination is made.

(Code 1981, § 8-301(I))

Sec. 18-159. Limitations on assessment.

- (a) *General rule.* The amount of the tax, additions to tax, penalties and interest imposed by this article and article II of this chapter shall be assessed within three years after the due date of the returns; provided that in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return is filed, the assessment may be made at any time.
- (b) *Extension by agreement.* The recorder and the taxpayer may enter into written agreements to extend the period within which the recorder may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(Code 1981, § 8-301(J))

Sec. 18-160. Limitations on collection.

- (a) *Where assessment is issued.* Every proceeding instituted by the recorder for the collection of the amount found to be due under an assessment which has become final of the tax, additions to tax, penalties or interest imposed by this article and article II of this chapter irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, penalty or interest, shall be brought or commenced within five years after the date on which such assessment has become final.
- (b) *Where assessment is not issued.* Every proceeding instituted by the recorder for the collection of the amount determined to be due by methods provided by law other than the issuance of an assessment, of the tax, additions to tax, penalties or interest imposed by this article and article II of this chapter, irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalties or interest, shall be brought or commenced within five years after the date on which the taxpayer filed the annual return is required, such five-year period shall begin on the day after the latest periodical return required to be filed in any year is filed.
- (c) *Exception as to false or fraudulent return or no return.* In the case of the filing of a false or fraudulent return, or in case no return is filed, the limitations specified in this section shall not apply.
- (d) *Extension of time for institutions of collection proceedings by agreement.* The recorder and the taxpayer may enter into written agreement to extend the period within which the recorder may institute proceedings for the collection of the amount found to be due under an assessment which has become final, or the amount determined to be due by methods provided by law other than the issuance of the assessment of the tax, additions to tax, penalties or interest imposed by this article and article II of this chapter. Such period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(Code 1981, § 8-301(K))

Sec. 18-161. Interest.

- (a) *Underpayments.* If the amount of a tax administered under this article and article II of this chapter is not paid on or before the last date prescribed for payment, interest on such amount at the rate of eight percent per annum shall be paid for the period from such last date to the date paid. For purposes of this section, the last date prescribed for payment shall be the due date of the return and shall be determined without regard to any extension of time for payment.
- (b) *Underpayment of estimated business and occupation tax.* In the case of an underpayment of estimated tax by a person who is taxable under the provisions of a B & O tax, there shall be added to the amount of tax due from the date such tax should have been paid, interest in the amount of eight percent per annum. An underpayment of estimated tax means the application of rates set forth in this division against estimated values or gross income which constitutes less than 80 percent of actual receipts.^[3]
- (c) *Erroneous refund or credit.* If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on such amount refunded or credited at the rate of eight percent per annum shall be paid by the claimant from the date the refund was made or the credit was taken to the date such amount is recovered.
- (d) *Overpayments.* Interest shall be allowed and paid at the rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of the tax administered under this division. Such interest shall be allowed and paid for the period commencing with the date of the filing by taxpayer of a claim

for refund or credit with the recorder and ending with the date of final administrative or judicial determination of overpayment. The recorder shall, within 30 days after such final determination of entitlement to refund, issue his requisition or establish a credit as requested by the taxpayer. Whenever the recorder fails or refuses to issue any such requisition or establish such credit within said 30-day period, the interest provided herein shall commence to accrue anew until performance by the recorder. The acceptance of such refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(e) *Applicable rules.*

- (1) *No interest payable on tax refunded or credited within 90 days after claim for refund or credit is filed.* In the event of any overpayment of the tax administered under this article and article II of this chapter, where the recorder issues his requisition or establishes a credit as requested by the taxpayer within 90 days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.
- (2) *Interest treated as tax.* Interest prescribed under this section on the tax shall be collected and paid in the same manner as taxes.
- (3) *No interest on interest.* No interest under this division shall be imposed on the interest provided by this section.
- (4) *Interest on penalties or additions to tax.* Interest shall be imposed under subsection (a) of this section on any assessable penalty or additions to tax only if such penalty or additions to tax is not paid within 15 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.
- (5) *Payments made within 15 days after notice and demand.* If notice and demand is made for payment of any amount, and if such amount is paid within 15 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(Code 1981, § 8-301(L))

Sec. 18-162. Additions to tax.

(a) *Failure to file return or pay tax due.*

- (1) In the case of failure to make or file a required return of the tax administered under this article and article II of this chapter, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; provided that this addition to tax shall be imposed only on the net amount of tax due.
- (2) In the case of failure to pay the amount shown as tax on any required return of the tax administered under this article and article II of this chapter on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than one month, with an additional one-half percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; provided, however, that the addition to tax shall be imposed only on the net amount of tax due.

(b) *Limitation and special rule.* In computing additions to tax under this section, only subsection (a)(1) or (a)(2) of this section shall be applicable to any one taxable period. If the correct

amount of tax due is less than the amount shown on the return, subsections (a)(1) and (a)(2) of this section shall apply only to the lower amount.

- (c) *Negligence or intentional disregard of rules and regulations.* In the case of underpayment of the tax administered under this article and article II of this chapter which is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment is due to negligence or intentional disregard of rules and regulations is for more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding 25 percent in the aggregate; provided that these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided for in subsection (a) of this section.
- (d) *False or fraudulent return.* In the case of the filing of any false or fraudulent return with intent to evade any such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to 50 percent thereof which shall be in lieu of the additions to tax provided for in subsections (a) and (c) of this section. The burden of proving fraud, willfulness or intent to evade tax shall be upon the recorder.
- (e) *Additions to tax treated as tax.* Additions to tax prescribed under this section on the tax shall be assessed, collected and paid in the same manner as taxes.

(Code 1981, § 8-301(M))

Sec. 18-163. Penalties.

- (a) *Fraudulent claim for refund or credit.* In the case of the filing of a false or fraudulent claim for refund or credit with the intent to defraud the town, there shall be added to such amount erroneously refunded or credited a penalty equal to 50 percent thereof. No additions to tax shall be imposed under this section for any offense to which this subsection is applicable. The burden of proving fraud or intent to defraud shall be upon the recorder.
- (b) *Collection of penalty.* Any money penalty may be collected in the same way as the taxes imposed herein.

(Code 1981, § 8-301(N))

FOOTNOTE(S):

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B&O tax not currently in use.