

## **Chapter 74 TAXATION AND REVENUE**

ARTICLE I. - IN GENERAL

ARTICLE II. - PUBLIC UTILITY TAX

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### **ARTICLE I. IN GENERAL**

Sec. 74-1. Public safety fee.

Secs. 74-2—74-20. Reserved.

#### **Sec. 74-1. Public safety fee.**

Any resident owner/lessee within the town limits is required to pay \$9.00 per quarter assessed on the trash removal to cover a public safety fee. Any business owner/lessee shall be required to pay \$24.00 per quarter. This revenue is to be used to subsidize law enforcement funding.

(Ord. No. 2002-09, 9-2-2002)

#### **Secs. 74-2—74-20. Reserved.**

### **ARTICLE II. PUBLIC UTILITY TAX <sup>[1]</sup>**

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Sec. 74-28. Enforcement provisions; penalties.

Sec. 74-29. Effective date of tax; notice to utilities.

Secs. 74-30—74-46. Reserved.

**Sec. 74-21. Utility excise tax imposed.**

An excise tax upon the privilege of purchasing, using or consuming within the corporate limits of the town any public utility service and tangible personal property supplied by any public utility subject to the jurisdiction of the state public service commission (whether such public utility be privately or municipally owned or otherwise owned by any type of governmental entity) is hereby imposed and levied as follows in this article.

(Code 1981, tit. 8, ch. 4)

**Sec. 74-22. 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:

*Commercial or industrial user* means the owner or tenant or property used for commercial, industrial or other such business purposes, who pays for utility services for said property, except that, with respect to local telephone service, the term "commercial or industrial" means any person furnished service classified as "business" under the tariffs filed with said public service commission.

*Person* means and includes individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form and character.

*Public utility services* means all services and tangible personal property purchased within the town from a seller, to include but not to be limited to local telephone service, electric service, gas service, including bottled or liquid gas; water service, garbage and sanitary sewer service; if purchased, used or consumed within the corporate limits of the town; if the seller thereof is classified as a public utility subject to the jurisdiction of the state public service commission.

*Purchaser* means and includes every person who purchases, uses or consumes a public utility service.

*Residential user* means the owner or tenant of a private residential property who pays for utility service in or for said property, except that, with respect to local telephone service, the term "residential user" means any person furnished service classified as "residential" under tariffs filed with the state public service commission.

*Seller* means and includes every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the state public service commission, who sells, furnishes or supplies a public utility service.

(Code 1981, § 8-401)

**Sec. 74-23. Imposition and levy; amount.**

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of the town such public utility service. Such tax shall be in the amount of two percent of the charge (exclusive of any federal or state tax thereon imposed upon the purchaser) made by the seller against the purchaser upon the amount of each periodic statement rendered such purchaser by the seller under the agreement made between the purchaser and the seller, and said tax shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this article is in addition to all other taxes imposed and levied by the town.

(Code 1981, § 8-402)

**Sec. 74-24. Collection; time of payment.**

It shall be the duty of every seller in acting as the tax collecting medium or agency for the town to collect from each purchaser for the use of the town the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to the town and each seller shall remit the amount of tax shown by said report to have been collected, to the town on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The required reports shall be in the form prescribed by the official of the town charged with the responsibility of collecting taxes due the town.

(Code 1981, § 8-403)

**Sec. 74-25. Records; inspection thereof.**

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of the town, which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefor, and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of this municipality at any and all reasonable business hours, and the duly authorized agents of this municipality shall have the right, power and authority to make at the expense of the town such transcripts thereof during such times as they may desire.

(Code 1981, § 8-404)

**Sec. 74-26. Exemptions.**

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

- (1) Purchases of public utility service for resale;
- (2) Purchases of public utility service by the United States of America, the state, and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof;
- (3) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied;
- (4) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones and specific charges for telephone calls to points outside the taxing municipality;
- (5) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

(Code 1981, § 8-405)

**Sec. 74-27. Nonliability of utility; duty of municipality; refunds; rules and regulations.**

There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the grounds that the public utility service was not purchased, used or consumed within the corporate limits of this municipality, the seller shall refer the question to the town treasurer and such seller thereafter collect or refrain from collecting such tax from such purchaser for such

public utility services as instructed in writing to do so by said official charged with responsibility of collecting taxes due. Any and all claims for refunds of such tax shall be presented to said official and not to the seller.

(Code 1981, § 8-406)

**Sec. 74-28. Enforcement provisions; penalties.**

- (a) Any amount of tax due and unpaid under this article shall be a debt due the town. It shall be a personal obligation of the purchaser which shall be enforceable as provided in W. Va. Code, § 8-13-15, as amended, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.
- (b) Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.00. The failure or refusal to pay the said tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense.

(Code 1981, § 8-407)

**Sec. 74-29. Effective date of tax; notice to utilities.**

The tax hereby imposed and levied shall not be effective until the town gives 60 days' written notice by certified mail of the tax to any public utility doing business within the town which is required to collect the tax imposed and levied hereby.

(Code 1981, § 8-408)

**Secs. 74-30—74-46. Reserved.**

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FOOTNOTE(S):

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**State Law reference—** Public utility tax, W. Va. Code, § 8-13-5a.

**ARTICLE III. PROPERTY TAX** <sup>[2]</sup>

Sec. 74-47. Power to tax realty and personalty.

Secs. 74-48—74-67. Reserved.

**Sec. 74-47. Power to tax realty and personalty.**

The town has power to levy and collect tax on real and personal property, subject to state law requirements.

**Secs. 74-48—74-67. Reserved.**

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FOOTNOTE(S):

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**State Law reference—** Municipal power to levy and collect taxes on real and personal property, W. Va. Code, § 8-13-1.

**ARTICLE IV. HOTEL-MOTEL OCCUPANCY TAX** <sup>[3]</sup>

Sec. 74-68. Definitions.

Sec. 74-69. Authority to impose.

Sec. 74-70. Applicability.

Sec. 74-71. Rate.

Sec. 74-72. Consumer to pay tax; accounting by hotel.

Sec. 74-73. Hotel or hotel operator not to represent that it will absorb tax.

Sec. 74-74. Occupancy billed to government agencies or employees.

Sec. 74-75. Collection of tax when sale on credit.

Sec. 74-76. Receivership, bankruptcy; priority of tax.

Sec. 74-77. Failure to collect or remit tax; liability of hotel operator.

Sec. 74-78. Total amount collected to be remitted.

Sec. 74-79. Interest and penalties.

Sec. 74-80. Tax return and payment.

Sec. 74-81. Keeping and preserving of records.

Sec. 74-82. Liability of officers.

Sec. 74-83. Cessation of business.

Sec. 74-84. Finance chair as agent of town.

Sec. 74-85. Assessment of tax when insufficiently returned.

Sec. 74-86. Notice of assessment; petition for reassessment.

Sec. 74-87. Hearing procedure; administrative decision.

Sec. 74-88. Appeals to circuit court.

Sec. 74-89. Tax constitutes debt due county.

Sec. 74-90. Injunction.

Sec. 74-91. Records; limitation on assessments.

Sec. 74-92. Refunds.

Sec. 74-93. Criminal penalties.

Sec. 74-94. Proceeds of tax; application of proceeds.

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Sec. 74-95. Formation and establishment of a visitor's bureau.

Secs. 74-96—74-120. Reserved.

### **Sec. 74-68. 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:

*Consideration paid or consideration* means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room.

*Consumer* means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the state or a political subdivision thereof.

*Convention and visitor's bureau and visitor's and convention bureau.* The terms "convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the city, county or region in which such convention and visitor's bureau or visitor's and convention bureau is located or engaged in business within.

*Convention center* means a convention facility owned by the state, a county, a city or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

*Evade* means to willfully and fraudulently commit any act with the intent of depriving the city of payment of any tax which there is a known legal duty to pay.

*Fraud* means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment is relied upon by the city.

*Hotel* means any facility or building, publicly or privately owned, including a facility located in a state, county or municipal park, in which the public may, for a consideration, obtain sleeping accommodations. The term "hotel" includes, but is not limited to, boardinghouses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term "hotel" includes state, county and city parks offering accommodations as herein set forth. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit or any facility providing fewer than three rooms in private homes, not exceeding a total of ten days in a calendar year, nor any tent, trailer, or camper campsites; provided that where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.

*Hotel operator* means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purpose of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

*Hotel room* means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" shall not

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be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.

*Net proceeds* means the gross amount of tax collections less the amount of tax lawfully refunded.

*Person* means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.

*Promotion of the arts* means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

*Recreational facilities* means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by the town.

*Regional travel council* means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of the state served by the regional travel council.

*Tax, taxes or this tax* means the hotel occupancy tax authorized by this article.

*Taxing authority* means the town levying or imposing the tax authorized by this article.

*Taxpayer* means any person liable for the tax authorized by this article.

*Willfully* means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this article, in respect of which the violation occurs; provided that the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant has knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge or of notice of such duty, intentionally fails to perform such act.

### **Sec. 74-69. Authority to impose.**

On or after July 1, 1988, there is hereby imposed and levied a privilege tax upon the occupancy of hotel rooms located within the town taxing jurisdiction, in accordance with provisions of W. Va. Code, § 7-18-1.

### **Sec. 74-70. Applicability.**

The privilege tax imposed by section 74-69 shall be imposed by the taxing authority uniformly throughout the town. The tax shall apply to all hotels located within the corporate limits of the town, including hotels owned by the state or any political subdivision of the state.

### **Sec. 74-71. Rate.**

- (a) Use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under chapter 11, article 15 of the West Virginia Code or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.
- (b) The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room; provided, however, the tax shall not be imposed on any consumer occupying a hotel room for 30 or more consecutive days.

(Ord. No. 2011-01, 5-5-2011)

**Sec. 74-72. Consumer to pay tax; accounting by hotel.**

The consumer shall pay to the hotel operator the amount of tax imposed by the town, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of the hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations. The city's claim shall be enforceable against, and shall be superior to, all other claims against the monies so commingled excepting only claims of the state for monies held by the hotel pursuant to the provisions of W. Va. Code, § 11-15-1 et seq. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.

**Sec. 74-73. Hotel or hotel operator not to represent that it will absorb tax.**

A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.

**Sec. 74-74. Occupancy billed to government agencies or employees.**

- (a) *Federal government.* Hotel room occupancy billed directly to the federal government shall be exempt from this tax; provided that rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.
- (b) *State government.* Hotel room occupancy billed directly to the state or its political subdivisions shall be exempt from this tax; provided that rooms paid for by an employee of the state for which reimbursement is made shall be subject to this tax.

**Sec. 74-75. Collection of tax when sale on credit.**

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within 30 days thereafter.

**Sec. 74-76. Receivership, bankruptcy; priority of tax.**

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this article shall be paid from the first money available for distribution in priority to all claims and liens except taxes and debts due to the United States which under federal law are given priority over the debts and liens created by municipal ordinance or order of the county commission for this tax and taxes and debts due to the state. Any person charged with the administration or distribution of any such property or estate who violates the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

**Sec. 74-77. Failure to collect or remit tax; liability of hotel operator.**

If any hotel operator fails to collect the tax authorized by this article and levied pursuant to this article or fails to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit; provided that such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can by good and substantial evidence prove the refusal of the purchaser to pay this tax despite the diligent effort in good faith of the hotel operator to collect the tax.

**Sec. 74-78. Total amount collected to be remitted.**

No profit shall accrue to any person as a result of the collection of the tax authorized under this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy imposed under this article for the occupancy of a hotel room, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

**Sec. 74-79. Interest and penalties.**

- (a) The tax imposed and levied by this order, if not paid when due, shall bear interest at the rate of six percent per annum from the due date of the return until paid.
- (b) If any hotel operator fails to make the return on any installment required by this order, or makes his 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 percent of the tax for the first month, or fraction thereof, of delinquency and one percent of the tax for each succeeding month, or fraction thereof, of delinquency; provided that if such failure is due to reasonable cause, then the taxing authority may waive in whole or in part these penalties.

**Sec. 74-80. Tax return and payment.**

- (a) The tax authorized by this article shall be due and payable in monthly installments on or before the 15th day of the calendar month next succeeding the month in which the tax accrued; provided that for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the 30-day payment period set forth in section 74-75, whichever first occurs. The hotel operator shall, on or before the 15th day of each month, prepare and deliver to the city a return for the preceding month, in the form prescribed by the city. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the city may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.
- (b) In the event that the tax due for any reporting period is less than \$10.00, the reporting requirements as stated in this section are hereby waived and no reporting shall be required until such time as the tax liability exceeds \$10.00.

**Sec. 74-81. Keeping and preserving of records.**

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years, unless the taxing authority

consents in writing to their destruction within that period or requires that they be kept for a longer period.

**Sec. 74-82. Liability of officers.**

If the taxpayer is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by state law, town ordinance, order of the county commission or other authority may be enforced against such officers as against the association or corporation which they represent.

**Sec. 74-83. Cessation of business.**

Whenever any operator required to collect and pay the taxing authority any tax collected pursuant to the provisions of this article shall cease to operate, go out of business or otherwise dispose of his business, any tax then payable to the town shall become immediately due and payable, and such operator shall immediately make a report and pay the tax due the town.

**Sec. 74-84. Finance chair as agent of town.**

- (a) The town finance chair shall be the town's agent for administration and collection of the tax, and shall have the power to distrain property and to initiate civil suits for collection of the tax imposed in this article.
- (b) The town recorder shall have the power and duty to issue tax returns for this article's tax.

**Sec. 74-85. Assessment of tax when insufficiently returned.**

If the treasurer believes that the tax imposed by this article has been insufficiently returned by an operator, either because the operator has failed or refused to properly collect or 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 of the operator and make an assessment therefor. Assessments shall be served upon the taxpayer either personally or by certified mail.

**Sec. 74-86. Notice of assessment; petition for reassessment.**

The treasurer shall give the operator written notice of any assessment made pursuant to this article. Unless the operator to whom a notice of assessment is given shall, within 30 days after service thereof, either personally or by certified mail, file with the treasurer a petition in writing, verified under oath by the operator or his duly authorized agent having knowledge of the fact, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections, the assessment shall become final and not subject to administrative or judicial review. The amount of an assessment shall be due and payable on the the 15th of the following month.

**Sec. 74-87. Hearing procedure; administrative decision.**

- (a) When a petition for reassessment provided for in section 74-86 is filed within the time prescribed in such section for such filing, the treasurer shall assign a time and place of a hearing thereon and shall notify the operator of such hearing by written notice at least 20 days in advance thereof. Such hearing shall be held within 100 days from the date of filing

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the petition unless continued by agreement of the parties or by the treasurer for sufficient cause.

- (b) 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 operator to show the assessment is incorrect and contrary to law, in whole or in part.
- (c) After any such hearing, the treasurer or a hearing examiner shall, within a reasonable time, not to exceed 30 days, give notice in writing of his decision.

### **Sec. 74-88. Appeals to circuit court.**

- (a) An appeal may be taken by the operator to the municipal court of the town within 30 days after service of the treasurer's hearing examiners decision.
- (b) The appeal shall be taken by the filing of a petition and notice, which petition and notice shall be served upon or notice accepted by the treasurer as an original notice. When the petition and notice are served they shall, with the return or acceptance thereon, be filed in the office of the town clerk and docketed as other cases, with the operator as plaintiff and the treasurer as defendant. The filing of the appeal shall not stay the collection of the tax. The collection of the tax shall be stayed if the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by the clerk, the penalty of the bond to be not less than the total amount of the tax, interest and penalties (to such date appealed from and conditioned that the plaintiff shall perform the orders of the court; provided that a judge of the municipal court may stay the collection of the tax without the requirement of the bond upon a proper showing by the operator that the properties of the operator are sufficient to secure performance of the court's orders or that the ends of justice will be served thereby.
- (c) The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the treasurer. In such appeal, a certified copy of the treasurer's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of the order. The court shall render its decree thereon; and a certified copy of the decree shall be filed by the town clerk with the treasurer, who shall then, if applicable, correct the assessment in accordance with such decree.
- (d) Unless an appeal is taken pursuant to this section within 30 days after service of the administrative decision, the treasurer's decision shall become final and conclusive and not be subject to 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.

### **Sec. 74-89. Tax constitutes debt due county.**

Any tax, penalty or interest due and payable under this article shall be a debt due the town and shall be recoverable in an action brought in the name of the town for the recovery of such tax, penalty or interest.

### **Sec. 74-90. Injunction.**

If the failure of any operator to comply with the provisions of this article shall have continued 60 days, the treasurer may proceed to obtain an injunction restraining the operator from doing business in this town until he fully complies with the provisions of this article. In any proceeding under this section upon judgment or decree for the plaintiff, he shall be awarded his costs.

### **Sec. 74-91. Records; limitation on assessments.**

The amount of tax, interest and penalty imposed by this article shall be assessed within two years after the due date of the return; 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, the assessment may be made at any time.

**Sec. 74-92. Refunds.**

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the town under the provisions of this article, it may be refunded as provided in subsections (b) and (c) of this section, if a claim in writing therefor, stating under penalty of perjury, the specific grounds upon which the claim is founded, is filed with the town within two years of the date of payment of such tax, interest or penalty. Claims for refund shall be made in writing.
- (b) An operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established that the person from whom the tax has been collected was not liable for the payment of such tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has been refunded to the person from whom the tax was collected.
- (c) A person paying the tax may obtain a refund of tax overpaid or paid more than once or erroneously or illegally collected or received by the town by filing a claim for refund, but only when the tax was paid by such person directly to the treasurer or when such person, having paid the tax to the operator, establishes that such person has been unable to obtain a refund from the operator who collected the tax.
- (d) No refund shall be paid unless the claimant establishes his right thereto by written records evidencing this entitlement thereto.

**Sec. 74-93. Criminal penalties.**

- (a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to be made by this article; or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority, or to willfully evade the payment of the tax, or any part thereof; or for any person to willfully aid or abet another in any attempt, to evade the payment of the tax, or any part thereof; or for any officer, partner or principal of any corporation or association willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this article, with the intent to evade the payment of this tax.
- (b) Any person willfully violating any of the provisions of this article shall for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500.00 or imprisoned by a period of not more than 30 days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than \$1,000.00 nor more than \$10,000.00, or imprisoned in the penitentiary not less than one year, nor more than three years, or in the discretion of the court, be confined in the county jail no more than one year, or both fined and imprisoned.
- (c) Every prosecution for any offense arising under this article shall be commenced within three years after the offense was committed, notwithstanding any provision of this Code to the contrary.
- (d) Proceedings against any person under this section shall be initiated in the county of this state wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence, then in the county where the offense was committed.

**Sec. 74-94. Proceeds of tax; application of proceeds.**

- (a) *Application of proceeds.* The net proceeds of the tax collected and remitted to the taxing authority, pursuant to this article shall be deposited into the general revenue fund of the town and after appropriation thereof, shall be expended only for the purposes as hereinafter provided.
- (b) *Required expenditures.* At least 50 percent of the new revenue received during the fiscal year by the town pursuant to the provisions of this article, shall be expended in the following manner for the promotion of conventions and tourism:
  - (1) If a convention and visitor's bureau or regional bureau is located within the town, the town council shall appropriate at least 50 percent of the revenue derived as hereinabove provided to that convention and visitor's bureau or regional bureau.
  - (2) If a convention and visitor's bureau or regional bureau is not located within the town, then the percentage appropriation required by subsection (b)(1) of this section shall be appropriated as follows:
    - a. Any hotel located within the town may apply to the town for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to town, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed 75 percent of that portion of such tax, collected and remitted by such hotel which is required to be expended pursuant to subsection (a) of this section; provided that prior to appropriating any monies to such hotel, the town shall require the submission of, and give approval to, a budget setting forth the proposed uses of such monies.
    - b. The balance of net revenue of the required expenditures shall be appropriated to the regional travel council serving the area in which the town/municipality is located.
- (c) *Permissible expenditures.* After making the appropriations required by subsection (b) of this section, the remaining portion of the new revenues receivable during the fiscal year by the town may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:
  - (1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;
  - (2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;
  - (3) The promotion of conventions;
  - (4) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition); or
  - (5) The promotion of the arts.
- (d) *Allocation formula.* Proceeds shall be allocated as follows:
  - (1) The town agrees to establish a visitor's bureau in conjunction with the county commission to promote tourism and conventions within the county.
  - (2) Fifty percent of all proceeds collected under this tax will be designated to the visitor's bureau.
  - (3) The permissible expenditures, or remaining 50 percent, will be allocated for the permissible activities as allowed by the provisions of W. Va. Code, § 7-18-14.

**Sec. 74-95. Formation and establishment of a visitor's bureau.**

(a) *Name.*

- (1) The town agrees to establish a visitor's bureau in conjunction with the county commission to promote tourism and conventions within the county. The name of this organization shall be convention visitors bureau may be officially used to designate the organization, its units or members thereof.
- (2) The organization shall be a nonprofit, nonpolitical, and nonsectarian organization of voluntary membership.
- (3) Individuals cannot be denied membership in the convention visitors bureau because of race, sex, creed, religion, or national origin.

(b) *Purpose.*

- (1) *Primary purpose.* The primary purpose of the convention visitors bureau is to enhance the economic climate of Berkeley Springs and Morgan County by developing and promoting the tourist resources and convention attractions.
- (2) *Contributory purposes.* Contributory purposes are as follows:
  - a. Revitalize the economy of Berkeley Springs and Morgan County through developing tourist potential.
  - b. Identify and develop community resources for tourism.
  - c. Enhance communication among those community groups conducting tourist development activities.
  - d. Coordinate activities designed to promote tourism.
  - e. Develop a long-range tourist development plan for Berkeley Springs and Morgan County.
  - f. Publicize tourism objectives.
  - g. Disseminate information conducive to promoting specific tourism projects in our area.
  - h. Facilitate the working relationships between governmental agencies and the private sector interested in tourism.

(c) *Organization.*

- (1) The convention visitors bureau is an organization concerned with enhancing the economic vitality of the local community by promoting the industry of tourism.
- (2) The organization is intended to complement, not supplant the efforts of other groups involved in the tourism industry.
- (3) The fiscal year for this organization shall be July 1 to June 30.

(d) *Membership.*

- (1) *Appointment.* The convention visitors bureau shall consist of members appointed by the county commission and the town in accordance with the following formula:
  - a. All motel or hotel operators having 30 or more rooms within their facility shall be designated as a member of the convention visitors bureau. Operators qualified to be members shall be appointed by the town if the operator's facility is located within the town; or by the county, if the operator's facility is located outside the town.
  - b. All motel or hotel operators having less than 30 rooms will be represented by at-large representatives chosen from their class by the county commission or town as

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follows: One at-large representative shall be selected by the county and one at-large representative shall be chosen by the town.

- c. Two members representing the county commission (one commissioner and one appointee of the commission).
  - d. Two members representing the town (one councilmember).
  - e. The president (or member, as appointed) of the Morgan County-Berkeley Springs Chamber of Commerce shall be designated as a member.
- (2) *Terms.* Members of the bureau first appointed shall serve respectively for terms of one year, two years, and three years, divided as equally as possible between these terms. Thereafter, members shall be appointed for terms of three years each. Terms of members of the county commission, town council, and chamber of commerce shall be coextensive with the term of office to which he has been elected.
- (3) *First yearly meeting.* The convention visitors bureau shall designate their regular meeting date at their first yearly meeting.
- (4) *Special meetings.* Special meetings may be called by the president or shall be called upon written request of a majority of the convention visitors bureau for the purpose stated in the call for the meeting. A quorum shall consist of a majority of the members.
- (5) *Officers.*
- a. *Election.* The officers of the convention visitors bureau shall consist of a president, vice-president, and treasurer. The president, vice-president, and treasurer shall be elected in the month of July each year.
  - b. *Nomination.* All officers shall be nominated by the nominating committee appointed by the president prior to the July meeting. Officers elected shall assume office immediately following election.
  - c. *President.* The president shall preside at meetings of the convention visitors bureau, shall appoint committees not otherwise provided for, shall authorize calls for special meetings, shall see that all orders and resolutions of the convention visitors bureau are carried into effect, and generally perform the duties pertaining to the office. He shall be ex officio member of each committee.
  - d. *Vice-president.* The vice-president shall assist the president and perform the duties of the president in his absence.
  - e. *Secretary.* The secretary to the convention visitors bureau shall send notices and keep minutes of all meetings of the treasurer. The president, vice-president, or treasurer shall have the power to sign vouchers and checks. All vouchers and checks shall require two signatures.
- (6) *Committees.*
- a. *Finance committee.* The finance committee shall consist of three members appointed by the president. Their duties shall be to plan the budget of the convention visitors bureau and to recommend ways and means by which the activities of the convention visitors bureau may be financed.
  - b. *Program and planning committee.* The program and planning committee shall consist of three members appointed by the president. The duties of the committee shall be to meet and confer with the coordinator in the formulation of plans for operations and programs.
- (e) *Finance.*
- (1) All financial books and records of the convention visitors bureau shall be maintained and kept in conformity with all applicable state and federal regulations, and in a form approved by the office of the state tax commissioner.

- (2) The convention visitors bureau will contract with the private sector for personnel services to be performed in accordance with the goals and responsibilities of the bureau.
- (f) *Amendment.* These rules and regulations may be amended by a majority vote of the town council at a regular or special meeting.

**Secs. 74-96—74-120. Reserved.**

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FOOTNOTE(S):

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**State Law reference—** Authority to levy hotel occupancy tax, W. Va. Code, § 7-18-1; hotel occupancy tax, W. Va. Code, § 8-13-3.

**ARTICLE V. GROSS RECEIPTS TAX**

Sec. 74-121. Definitions.

Sec. 74-122. Construction and applicability.

Sec. 74-123. Administration and enforcement.

Sec. 74-124. Imposition of tax on the business of providing electric light and power service.

Sec. 74-125. Computation of tax; remittance.

Sec. 74-126. Return and remittance by taxpayer.

Sec. 74-127. Tax year.

Sec. 74-128. Tax cumulative.

Sec. 74-129. Payment.

**Sec. 74-121. 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 shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. The term "business" shall not include a casual sale by person who is not engaged in the business of selling the type of property involved in such casual sale.

*Gross income* means the gross receipts of the taxpayer derived from sales and demand charges of electric light and power service.

*Service business or calling* means and shall include 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.

*Taxpayer* means any person liable for any tax under this article.

(Code 1981, § 8-2B01)

**Sec. 74-122. Construction and applicability.**

This article shall not be construed to assess a tax upon any person, business, calling, service, profession, or property that is not similarly taxed by the state. The measure of tax expressed in this article shall not include gross income derived from interstate commerce or commerce with a foreign country.

(Code 1981, § 8-2B02)

**Sec. 74-123. Administration and enforcement.**

The administration of this article is vested in and shall be exercised by the recorder, who shall prescribe forms and reasonable rules or procedures in conformity with this article subject to the approval of the town council, for the making of returns and for the ascertainment, assessment, and collection of the taxes imposed hereunder, and the enforcement of any of the provisions of this article in any of the courts of the state shall be under the exclusive jurisdiction of the recorder, who shall require the assistance and act through the town attorney.

(Code 1981, § 8-2B03)

**Sec. 74-124. Imposition of tax on the business of providing electric light and power service.**

Upon any person engaging or continuing within this town in the business of providing electric light and power service, the tax shall be equal to four percent on sales and demand charges for domestic purposes and commercial lighting and three percent on all other sales and demand charges.

(Code 1981, § 8-2B04)

**Sec. 74-125. Computation of tax; remittance.**

- (a) The business and occupation taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The retroactive tax shall be due and payable in an installment on or before January 31, 1983. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign it and mail it, together with a remittance, in the form required by the recorder, or the amount of tax to the office of the recorder. In estimating the amount of tax due for each quarter, the taxpayer may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of \$100.00 in any year, the taxpayer may pay the same quarterly as foresaid or, with the consent in writing of the recorder, at the end of the month next following the close of the tax year.
- (b) Any other provision of this section notwithstanding, the recorder may require, if he deems it necessary to insure payment of the tax, the return and payment under this section for periods of shorter duration than quarter-year periods.

(Code 1981, § 8-2B05)

**Sec. 74-126. Return and remittance by taxpayer.**

On or before the expiration of one month after the end of the tax year, each taxpayer shall make a return for the entire year showing the gross proceeds of sales or gross income of business and compute the amount of tax chargeable against him in accordance with the provisions of this article and deduct the amount of quarterly payments, as hereinbefore provided, if any, and transmit with his report a remittance in the form required by the recorder covering the residue of the tax chargeable against him to the office of the recorder. Such return shall be signed by the taxpayer, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if joint venture, association, trust, or any other group or combination acting as a unit, and any individual delegated by such firm, corporation, joint venture, association, trust or any group or combination acting as a unit shall sign and return on behalf of the taxpayer. The recorder, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

(Code 1981, § 8-2B06)

**Sec. 74-127. Tax year.**

The assessment of taxes herein made and the returns required therefor shall be for the year ending on June 30. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than such year, he may, with the consent of the recorder, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

(Code 1981, § 8-2B08)

**Sec. 74-128. Tax cumulative.**

The tax imposed by this article shall be in addition to all other licenses and taxes levied by other ordinances as a condition precedent to engaging in any business, trade, or calling. A person exercising a privilege taxable under this article, subject to the payment of all license and charges which are a condition precedent to exercising the privilege taxes, may exercise the privilege for the current year upon the condition that he shall pay the tax accruing under this article.

(Code 1981, § 8-2B09)

**Sec. 74-129. Payment.**

Every remittance of taxes imposed by this article shall be made by bank draft, certified check, money order, or certificate of deposit to the recorder, who shall issue his receipt therefore to the taxpayer as provided by law.

(Code 1981, § 8-2B10)