

CODIFIED ORDINANCES OF BELLE
PART SEVEN – BUSINESS AND TAXATION CODE

ARTICLE 711
Business and Occupation Tax

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CROSS REFERENCES

Authority to tax – see W. Va. Code 8-13-5
 Business and occupation tax – see W. Va. Code Art. 11-13
 Collection of taxes – see W. Va. Code 8-13-15 et seq.

- (i) "Selling at wholesale" or "wholesale sales" means and includes:
 - (1) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property;
 - (2) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article;
 - (3) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the State, its institution or political subdivision.
- (j) "Contracting" includes the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.
- (k) "Recorder" means the Town Recorder, his deputies or subordinates.
(Ord. 60. Passed 3-7-61.)

711.02 IMPOSITION OF PRIVILEGE TAX.

(a) There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in Sections 711.03 to 711.12, commencing with the fiscal year beginning July 1, 1959, and subsequent years. If any person liable for any tax under Sections 711.03 or 711.04 shall ship or transport his products, or any part thereof, out of the Town without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the Town shall be the basis for the assessment of the tax imposed in such sections. The Recorder shall prescribe equitable and uniform rules for ascertaining such value.

(b) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Recorder shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(c) A person exercising any privilege taxable under Sections 711.03 or 711.04 and engaging in the business of selling his natural resources or manufactured products at retail in this Town shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 711.05 for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in this Town. But any person exercising any privilege taxable under Sections 711.03 or 711.04 and engaging in the business of selling his natural resources or manufactured products to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed in Section 711.06.

and turkeys by a person, firm or corporation, which poultry and turkeys are to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products, on a wholesale basis shall be subject to the same tax as is imposed on the business of selling at wholesale as provided in Section 711.05.

(b) It is further provided, however, that in those instances in which the same person partially manufactures products within this Town and partially manufactures such products outside this Town the measure of his tax under this section shall be that proportion of the sale price of the manufactured product that the payroll cost of manufacturing within this Town bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operation in this Town bears to the full cost of manufacture of the articles.

(Ord. 3. Passed 6-9-59.)

711.05 BUSINESS OF SELLING TANGIBLE PROPERTY.

Upon every person engaging or continuing within this Town in the business of selling any tangible property whatsoever, real or personal, including the sale of food, and the services incident to the sale of food in hotels, restaurants, cafeterias, confectioneries, and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or of selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to one-half of one percent of the gross income of the business, except that in the business of selling at wholesale the tax shall be equal to fifteen one-hundredths of one percent of the gross income of the business.

(Ord. 3. Passed 6-9-59.)

711.06 PUBLIC SERVICE OR UTILITY BUSINESS.

Upon any person engaging or continuing within this Town in any public service or utility business, except railroad, railroad car, express, pipe line, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: Water companies, four percent; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes; natural gas companies, three percent on the gross income, such gross income for this purpose to be determined by deducting from gross income from all sales of gas to consumers the amount of the tax paid by the taxpayer under Section 711.03 on the production of the same gas; toll bridge companies, three percent; and upon all other public service or utility business, two percent. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed under the appropriate section or sections of this article.

(Ord. 3. Passed 6-9-59.)

(b) Persons taxed pursuant to the provisions of this section shall not be taxed under Section 711.12.
(Ord. 135. Passed 6-1-69.)

711.12 SMALL LOAN AND INDUSTRIAL LOAN BUSINESSES.

Upon every person engaging or continuing within this Town in the business of making loans of money, credit goods, or things in action, who because of such activity is required under the laws of the State to obtain a license from the Commissioner of Banking of the State, and upon each and every industrial loan company, the tax shall be one percent (1%) of the gross income of any such activity, notwithstanding any other provisions of this article.
(Ord. 3. Passed 6-9-59.)

711.13 EXEMPTIONS.

(a) There shall be an exemption in every case of a sum equal to fifty dollars (\$50.00) plus any amounts legally paid to this Town for licenses or certificates of registration in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to the exemption computed as hereinabove provided that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

(b) The provisions of the article shall not apply to:

- (1) Insurance companies which pay the State a tax upon premiums; provided, however, that such exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this Town, whether such income be in the form of rentals or royalties;
- (2) Persons engaged in the business of banking; provided, however, that such exemption shall not extend to that part of the gross income of such persons which is received for the use of real property owned, other than the banking house or building in which the business of the bank is transacted, whether such income be in the form of rentals or royalties;
- (3) Non-profit cemetery companies organized and operated for the exclusive benefit of their members;
- (4) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;
- (5) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;
- (6) Production credit association, organized under the provisions of the federal "Farm Credit Act of 1933"; provided, however, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code Art. 19-4;
- (7) Building and loan associations and federal savings and loan associations.

(Ord. 70. Passed 5-23-61.)

(b) If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the Recorder, and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.
(Ord. 3. Passed 6-9-59.)

711.18 ASSESSMENT OF TAX WHEN INSUFFICIENTLY RETURNED.

If the Recorder believes that the tax imposed by this article is 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 of the taxpayer and make an assessment therefor.
(Ord. 3. Passed 6-9-59.)

711.19 JEOPARDY ASSESSMENTS.

(a) If the Recorder believes that the collection of any tax which he is required to administer will be jeopardized by delay, he shall thereupon make an assessment of the tax, noting that fact upon the assessment. The amount assessed shall be immediately due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such an assessment becomes final.

(b) A petition for reassessment by a person against whom a jeopardy assessment has been made must be accompanied by such security as the Recorder may deem necessary to insure compliance with this article.
(Ord. 3. Passed 6-9-59.)

711.20 NOTICE OF ASSESSMENT; PETITION FOR REASSESSMENT; HEARING.

The Recorder shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (except in the case of jeopardy assessments), either personally or by registered 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 definiteness and particularly the items of the assessment objected to, together with the reason for such objections, such assessments shall become and be deemed conclusive and the amount thereof shall be payable at the end of the thirty day period. In every case where a petition for reassessment as above described is filed, the Recorder shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the Recorder for good cause. The hearing shall be informal and may be conducted by an examiner designated by the Recorder. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the Recorder shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the Recorder's decision shall be final.
(Ord. 3. Passed 6-9-59.)

711.25 PAYMENT; PENALTY FOR NONPAYMENT.

(a) 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 therefor to the taxpayer and pay the moneys into the Town treasury to be kept and accounted for as provided by law.

(b) If the taxpayer fails to make the return required by this article, 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 the 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, however, that if such failure is due to reasonable cause, the Recorder may waive or remit in whole or in part these penalties.

(c) If the failure to pay is due to fraud or intent to evade this article and the rules and regulations promulgated thereunder, there shall be added an additional penalty of twenty-five percent of the amount of the tax, exclusive of penalties.

(d) The penalties so added shall be collected at the same time and in the same manner and as a part of the tax.
(Ord. 3. Passed 6-9-59.)

711.26 TAX A DEBT; LIENS.

A tax due and unpaid under this article shall be a debt due the Town. It shall be a personal obligation of the taxpayer and shall be a lien upon the property of the taxpayer; provided, that such lien shall be subject to the restrictions and conditions embodied in West Virginia Code Article 38-10c.
(Ord. 3. Passed 6-9-59.)

711.27 COLLECTION BY ACTION OR SUIT; INJUNCTION.

(a) The Recorder may collect any tax, interest and penalty due and unpaid under the provisions of the article by action in debt, assumpsit, motion for judgment or other appropriate proceeding in the county in which the activity taxed was engaged in or the taxpayer resides; or by a suit to enforce the lien therefor in any county in which property of the taxpayer may be found; or, if the tax due and unpaid under this article is three hundred dollars (\$300.00) or less, by suit in the court of any justice having jurisdiction of the taxpayer or of his property. If the failure of any taxpayer to comply with the provisions of this article shall have continued sixty days, the Recorder may proceed to obtain an injunction restraining the taxpayer 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.

(b) In the event a business subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of such taxes as the same become due.
(Ord. 3. Passed 6-9-59.)

711.32 CERTIFICATE OF ASSESSMENT OF TAXES.

The Recorder for the more effective collection of the tax may file with the clerk of the county court of Kanawha County a certified copy of an assessment of taxes under this article. A certificate so filed shall be recorded and thereafter shall constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the Town as against all parties whose interest arose after such recordation. Upon payment of taxes delinquent under this article the lien of which shall have been recorded the Recorder shall certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificates, one to the taxpayer and one to the clerk of the county court of Kanawha County. The clerk of the county court shall record the certificate in the book in which releases are recorded. From the date that such a certificate is admitted to record the land of the taxpayer in the Town shall be free from any lien for taxes under this article accrued to the date that the certificate was issued.

(Ord. 3. Passed 6-9-59.)

711.33 COLLECTION BY DISTRAINT.

The Recorder may distrain upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness, of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder. The Recorder may require the assistance of the Sheriff of Kanawha County in levying such distress in Kanawha County, West Virginia. The Sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all penalties collected over and above the principal amount of the tax due, but in no case shall such compensation exceed twenty-five dollars (\$25.00). All taxes and penalties so collected shall be reported within ten days after collection to the Recorder, who shall prescribe by general regulation the manner of remittance of such funds and of allowing the collecting officer the compensation due him under this section.

(Ord. 61. Passed 3-7-61.)

711.34 ADMINISTRATION BY RECORDER.

The administration of this article is vested in and shall be exercised by the Recorder who shall prescribe forms and reasonable rules in conformity with this article 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 of and act through the Town Attorney.

(Ord. 3. Passed 6-9-59.)

711.99 PENALTY.

No person shall refuse to make the return provided to be made in Section 711.16; or make any false or fraudulent return or false statement in any return, with intent to defraud the Town or to evade the payment of the tax, or any part thereof, imposed by this article; or aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article, with the intent to evade the payment of any tax