

Finance and Taxation

CHAPTER 6.

FINANCE AND TAXATION.

*For state law as to municipal taxation and finance generally, see W. Va. Code, § 8-13-1 et seq.
As to licenses generally, see ch. 9 of this Code.*

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nated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.

Gross proceeds of sales. The value actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The words "gross income" and "gross proceeds of sales" shall not be construed to include cash discounts allowed and taken on sales, the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit, or the sale price of any article accepted as part payment on any new article sold, or if the full sale price of the new article is included in the "gross income" or "gross proceeds of sales."

Sale. The exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale.

Service business or calling. 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. Any person liable for the tax imposed by this chapter.

Tax year. Either the calendar year or the taxpayer's fiscal year when the taxpayer has secured permission from the state tax commissioner to use the same as his tax period in lieu of the calendar year.

Wholesaler. A person conducting a regularly organized jobbing or wholesale business, known to the trade as such and selling to retailers or to other wholesalers, in wholesale quantities and at wholesale prices. (10-21-48, § 2; 6-1-67, § 2.)

Sec. 6-8. Imposed.

There is hereby levied and shall be collected an annual privilege tax upon every person who is engaged in or who is carrying on within the city any business, service business or calling or other activity taxable under article 13, chapter 11 of the Code of West Virginia, 1931, as amended. (10-21-48, § 3.)

Sec. 6-9. Persons subject to.

The following persons shall be subject to such tax:

(a) Persons engaged or continuing in the business of producing any natural resource products;

(c) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(d) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;

(e) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article 4, chapter 19 of the Code of West Virginia, 1931, as amended.

(f) Building and loan associations, and federal savings and loan associations;

(g) Persons engaged in conducting the business of industrial loans under authority granted them by article 7, chapter 3 of the Code of West Virginia, 1931; provided, that such exemption shall not extend to that part of the gross income of such persons which is received from the use of real property owned, other than the business house or building in which the business of the industrial loan company is transacted, whether such income be in the form of rentals or royalties. (10-21-48, § 5.)

Sec. 6-11. Payment.

The tax imposed by this article shall be paid in quarterly installments on or before thirty days after the end of the calendar quarter in which it accrues. The taxpayer, within such thirty day period after the end of each such quarter, shall make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and make return thereof together with a remittance of the tax due thereon to the city collector and treasurer. The city collector and treasurer, if he deems it necessary to insure payment of the tax, may require return and payment under this section for other than quarter year periods. The return and payment due under this section for the fourth calendar quarter may be consolidated with the return and payment required under section 6-12. The city collector and treasurer, subject to the approval of the council, shall prescribe the forms and estimates required by this section. (10-21-48, § 7.)

Sec. 6-12. Return and remittance by taxpayer.

On or before thirty days after the end of a tax year, each person subject to tax under this article shall make a return showing the total amount of the privilege tax (base rate and surtax, less exemptions) due from and payable by such person to the state for such tax year under the provisions of article 13, chapter 11, of the Code of West Virginia, 1931, as amended, by reason of business or other activities of such taxpayer carried on within the city, and shall compute thereon the amount of tax for which he is liable under this article

A penalty of five percent of the tax shall be added for any default for thirty days or less, and for each succeeding thirty days elapsing before payment, there shall be an additional penalty of one percent, all of which penalty shall be secured by the lien herein provided. (10-21-48, § 11.)

Sec. 6-16. Collection by suit; payment by receiver.

The city may collect taxes due and unpaid under this article, collect all accrued penalties, by action in assumpsit, motion for judgment or other appropriate proceeding in the circuit court of the county. After delinquency shall have continued sixty days, the city may proceed in the circuit court of the county to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties due under this article. In any proceeding under this section upon judgment or decree for the plaintiff, it shall be awarded its costs.

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. (10-21-48, § 12.)

Sec. 6-17. Lien upon property of person selling or quitting business.

The tax imposed by this article shall be a lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock of goods or shall quit business, and such person shall be required to make the return provided for under the terms and provisions of this article within thirty days after the date of sell-out of his business or stock of goods, or quitting of business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of such taxes due and unpaid until such time as the former owner shall produce a receipt from the city showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. (10-21-48, § 13.)

Sec. 6-18. Collection by distraint; other remedies; report of collection.

The city may distraint upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness, or any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder. The city may require the assistance of the sheriff, who in 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. All taxes and penalties so collected shall be reported within thirty days after collection to the

percent. The measure of this tax is the value of the entire production in the city, regardless of the place of sale or the fact that the delivery may be made to points outside the city; provided, that for the purposes of the production of oil classification and the production of natural gas classification, as set forth in this section, multiple coowners of oil or natural gas, in place, lessees thereof or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person," whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members' accounts or for members of such group or combination to take in kind any proportionate part of such natural resources.

Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties. Recipients of royalties or rents, in kind, in cash or otherwise, are taxable on their gross income pursuant to the provisions of section 6-27.

Sec. 6-21. Manufacturing, compounding or preparing products.

Upon every person engaging or continuing within the city in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others, in whole or part, any article, substance, commodity or electric power produced by public utilities or others and not taxed under other provisions of this article, or newspaper publishing, including all gross income or proceeds of sale from circulation and advertising, the amount of the tax imposed by this article shall be equal to the value of the article, substance, commodity or electric power or newspaper manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of three-tenths of one percent. The measure of this tax is to the value of the entire product manufactured, compounded or prepared in the city for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the city. However, the dressing and processing of food by a person, which food is to be sold on a wholesale basis by such person, 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 6-22.

It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the city and partially manufactures, compounds or prepares such products out-

Sec. 6-24. Business of contracting.

Upon every person engaging or continuing within the city in the business of contracting, the tax imposed by this article shall be equal to one and two-tenths percent of the gross income of the business.

Sec. 6-25. Business of operating amusements.

Upon every person engaging or continuing within the city in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax imposed by this article shall be equal to four-tenths of one percent of the gross income of the business.

Sec. 6-26. Service business or calling not otherwise specifically taxed.

Upon every person engaging or continuing within the city in any service business or calling not otherwise specifically taxed under this article, including but not limited to lawyers, doctors, engineers, architects, accountants and other similar service personnel, there is hereby levied and shall be collected a tax equal to six-tenths of one percent of the gross income of any such business.

Sec. 6-27. Business of furnishing property for hire.

Upon every person engaging or continuing within the city in the business of furnishing any real or tangible personal property, which has a tax situs in this city, or any interest therein for hire, loan, lease or otherwise, whether the return is in the form of rentals, royalties, fees or otherwise, the tax imposed by this article shall be six-tenths of one percent of the gross income of any such activity.

The term "tangible personal property," as used in this section, shall not include money or public securities.

Sec. 6-28. Banking and other financial business.

Upon every person engaging or continuing within the city in banking or financial business, from and after July 1, 1976, the tax imposed by this article shall be equal to one percent of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees and receipts from the sale of tangible personal property; provided; that gross income shall not include (a) interest received on the obligations of the United States, its agencies and instrumentalities, (b) interest received on the obligations of this or any other state, territory or possession of the United

Sec. 6-30. Imposition and levying of tax; amount of tax.

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 this municipality, 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 with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller; and 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 section is in addition to all other taxes imposed and levied by this municipality. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars in any given calendar month, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of such amount of twenty thousand dollars. In the event more than one public utility shall furnish the identical public utility service to the same purchaser, such purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service. (8-19-71, § 2.)

Sec. 6-31. Collection; time of payment; proration.

It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect from each purchaser for the use of this municipality 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 this municipality, and each seller shall remit the amount of tax shown by such report to have been collected to this municipality on or before the last day of the second calendar month following the calendar quarter in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax imposed and levied. The tax imposed and levied by this article shall apply to periodic statements rendered after November 1, 1971, and when any such periodic statement covers public utility service rendered both before and after such date, only that portion of the charge for public utility service rendered after such date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after June 30, 1971, within the period covered by such periodic statement, bears to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the official of this municipality charged with the responsibility of collecting taxes due this municipality. (8-19-71, § 3.)

The official of this municipality charged with the responsibility of collecting taxes due this municipality shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this chapter. (8-19-71, § 6.)

Sec. 6-35. Enforcement provisions; penalties.

Any amount of tax due and unpaid under this chapter shall be a debt due this municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in section 15, article 13, chapter 8 of the Code of West Virginia, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities. Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars. The failure or refusal to pay the tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense. (8-19-71, § 7.)