

**ORDINANCE NO. 1276**

**ORDINANCE AMENDING PROVISIONS OF ARTICLE 791, WHICH  
ESTABLISHED PUBLIC UTILITY TAX, TO NOW READ  
"BUSINESS AND OCCUPATION TAX"**

**WHEREAS**, the City of Weirton presently has a limited business and occupation tax listed under Article 791 of the City's Municipal Code; and,

**WHEREAS**, the City of Weirton wishes to broaden the application of the business and occupation tax as outlined in the West Virginia State Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEIRTON, BROOKE AND HANCOCK COUNTIES, WEST VIRGINIA**, that the City of Weirton hereby amends Article 791 of the Municipal Code to read as outlined in the document, which is attached hereto and incorporated therein.

**BE IF FURTHER ORDAINED** that said business and occupation tax shall be effective July 1, 2000.

**FIRST READING:** June 12, 2000

**PUBLICATION DATE:** June 15, 2000 and  
June 22, 2000

**SECOND READING:** June 29, 2000

\_\_\_\_\_  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

## ARTICLE 791

### WEIRTON BUSINESS & OCCUPATION TAX

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- 791.03 Producers of natural resource products
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### **791.01 DEFINITIONS.**

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

**Business.** "Business" means all activities engaged in or caused to be engaged in with the object or gain or economic benefit, either direct or indirect. "Business" shall not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. "Business" shall include the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and shall include the activities of a banking business or financial organization.

**Gross Income.** "Gross Income" means all income from whatever source derived, unless excluded by law. Gross income shall include income realized in any form, whether in money, property, or services. Gross income means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both. Gross income includes all receipts by the reason of the investment of the capital of the business engaged in and shall include rents, royalties, fees, reimbursed cost or expenses or other emoluments however designated. Gross income includes all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible property or service.

If services or property are paid for other than in money, the fair market value of the property or service taken in payment must be included in gross income. No deduction shall be allowed against gross income for the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expense whatsoever.

**Gross proceeds of sales.** "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property, without any deduction on account of the cost of property sold or expenses of any kind.

**Gross income and gross proceeds of sales.** The term "gross income" and "gross proceeds of sales" shall not be construed to include:

- (1) Cash discounts allowed and taken on sales;
- (2) The proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit;
- (3) The amount allowed as "trade-in value" for any article accepted as part payment for any article sold;
- (4) Excise taxes imposed by the State of West Virginia, and certain excise taxes imposed by the U.S. government, but only those federal excise taxes which are taxes on the consumer and which are held in trust by the vendor as an agent for the federal government. These include federal excise tax paid on gasoline, diesel and lubricants; or

- (5) Money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

**Banking business; financial organization.** "Banking Business" or "financial organization" means any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety per centum of the assets of which consists of intangible personal property and at least ninety per centum of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.

**Company; person.** The terms "person" or "company," herein used interchangeably include any individual, firm, partnership, joint venture, association, corporation, trust, estate or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

**Contracting.** "Contracting" shall mean 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. The term "Contracting" shall also include the alteration, improvement or development of real property.

**Prime Contractor.** The term "Prime Contractor" means a person engaged in the business of performing for others, contracts for the construction, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the work or for a specific portion thereof.

**Subcontractor.** The term "Subcontractor" means a person engaged in the business of performing a like or similar service for persons other than consumers, either for the entire work or for a specific portion thereof.

**Buildings or Structures.** The term "Buildings or Structures" means and includes, but is not limited to, everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general and ordinary sense, but also tanks, fences, conduits, culverts, railroad tracks, overhead and underground transmission systems, tunnels, monuments, retaining walls, bridges, trestles, parking lots and pavement for foot or vehicular traffic.

**Contracting, Repairing, Decorating or Improving.** The term "Contracting, Repairing, Decorating or Improving" of a new part of an existing building or structure or any part thereof, in addition to its ordinary meaning, includes the installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of such installation.

**Speculative Builder.** The term "speculative Builder" means and includes one who constructs improvements upon real property owned by him for sale or rental. The gross income derived by the speculative builder from the sale of real property upon which the speculative builder has constructed improvements shall be reported under the retail classification on the municipal business and occupation tax form. The sales price is the measure of the tax.

**Sale; sales; selling.** The terms "sale," "sales" or "selling" shall include any transfer of the ownership of, or title to, property, whether for money or in exchange for other property.

**Selling at wholesale; wholesale sales.** The terms "selling at wholesale" or "wholesale sales" shall mean:

- (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 municipal business and occupation tax;
- (3) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities, or to the state, its institutions or political subdivisions.

**Service business or calling.** "Service business" or "calling" 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 not including the services rendered by an employee to his employer. The term shall include, but not be limited to:

- (1) Persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use articles, substances or commodities which are owned by another or others;
- (2) Persons engaged as independent contractors in producing natural resource products which are owned by another or others, as personal property, immediately after the same are severed, extracted, reduced to possession and produced; and
- (3) The repetitive carrying of accounts in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or in connection with the sale of any tangible personal property or service, except as to persons taxed pursuant to the provisions of Section 791.11.

**Taxpayer.** "Taxpayer" means any person liable for any tax hereunder.

**Tax year; taxable year.** The terms "tax year" or "taxable year" shall mean either the calendar year, or the taxpayer's fiscal year when permission is obtained from the city finance director to use the same as the tax period in lieu of the calendar year.

#### **791.02 IMPOSITION OF PRIVILEGE TAX.**

There are hereby levied and imposed and shall be collected annual privilege taxes, against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in Sections 791.03 through 791.12, inclusive.

If any person liable for any tax under Sections 791.03 and 791.04 shall ship or transport his products, or any part thereof, out of the city 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 city shall be the basis for the assessment of the tax imposed in those sections.

Gross income included in the measure of the tax under Sections 791.03 and 791.04, except in the production of natural gas, shall neither be added nor deducted in computing the tax levied under the other sections of this Article.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and the seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the value upon which such privilege tax shall be levied shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interests exist between the buyer and the seller but where the circumstances or conditions are otherwise similar.

### **791.03 PRODUCERS OF NATURAL RESOURCE PRODUCTS.**

Upon every person engaging or continuing within the city in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource products, the amount of such tax shall be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as hereinafter provided, multiplied by the respective rates as follows: coal, 0%; limestone or sandstone quarried or mined, 0%; oil, 0%; natural gas in excess of the value of five thousand dollars, 0%; blast furnace slag, 0%; sand, gravel or other mineral products, not quarried or mined, 0%; timber, 0%; and other natural resource products, 0%.

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 delivery may be made to points outside the city.

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

Persons who produce natural resource products outside of the city and who make sale of the same within the city shall not pay the tax imposed by this Section but shall pay the tax imposed by Section 791.05 for the privilege of selling such products within the city.

A person exercising any privilege taxable under this Section and engaging in the business of selling his natural resource products at retail in the city shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 791.05 for the privilege of engaging in the business of selling such natural resource products at retail in the city. In addition, any person exercising any privilege taxable under this Section and engaging in the business of selling his natural resource products to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed in Section 791.05.

**791.04 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 or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), except electric power produced by public utilities or others, the amount of the tax shall be equal to the value of the article, substance, commodity or newspaper manufactured, compounded or prepared for sale, as shown by the gross proceeds -derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of 0%.

Persons exercising any privilege taxable under this Section, and engaging in the business of selling their manufactured products in the city, shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this Section at the rate set forth in Section 791.05 for the privilege of engaging in the business of selling such manufactured goods in the city.

A person exercising any privilege taxable under this Section and engaging in the business of selling his products at retail in the city shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 791.05 for the privilege of engaging in the business of selling such products at retail in the city.

The measure of the tax in this Section is 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 delivery may be made to points outside the city.

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 outside the city, the measure of his tax under this Section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within the city bears to the entire payroll cost of manufacturing the product.

The dressing and processing of food intended for human consumption by a person shall not be considered manufacturing or compounding or preparing for sale, but the sale of these products shall be reported either as wholesale or retail sale, as the case may be.

Persons who manufacture, compound or prepare products outside the city and who make sale of the same within the city shall not pay the tax imposed by this Section but shall pay the tax imposed by Section 791.05 for the privilege of selling such products within the city. If any person shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed.

**791.05 BUSINESS OF SELLING TANGIBLE PROPERTY; CERTAIN SALES EXEMPT.**

Upon every person engaging or continuing within the city in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectioneries and other public eating houses, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds or other evidence of indebtedness, there is hereby levied, and shall be collected, a tax equal to 0% of the gross income of the business; except, that in the case of selling at wholesale, the tax shall be equal to 0% of the gross income of the business.

**791.06 PUBLIC SERVICE OR UTILITY BUSINESS.**

- (A) Upon any person engaging or continuing within the city in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there are levied, and shall be collected, taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows:
- (1) Street and inter-urban and electric railways, 1%;
  - (2) Water companies, 4%, except as to income received by municipally owned water plants.
  - (3) Electric light and power companies, 4% on sales and demand charges for domestic and commercial lighting, and 3% on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same;
  - (4) Natural gas companies, 3% 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 within the city the amount of tax paid by the taxpayer to the state under W.Va. Code §11-13-2d(4), as amended and in effect on January 1, 1959, on the production of the same gas;
  - (5) Toll bridge companies, 3%; and
  - (6) Upon all other public service or utility businesses, 2%.
- (B) The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries.

**791.07 BUSINESS OF CONTRACTING.**

Upon every person engaging or continuing within the city in the business of contracting, the tax shall be equal to 0% of the gross income of the business.

A prime contractor, one who furnishes work or both materials and work under a written or oral 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 realty, must report his gross income under the contracting classification without any deduction on account of any expenses incurred. If the prime contractor executes a contract with another for a portion of the job or project, the prime contractor receives no deduction from gross income on account of any payments made to the subcontractor. The subcontractor will also be taxable on his gross income under the contracting classification.

**791.08 BUSINESS OF OPERATING AMUSEMENTS.**

Upon every person engaging or continuing within the city in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, carnival, circus, dance hall, skating rink,

racetrack, or any other place at which amusements are offered to the public, the tax shall be equal to 0% of the gross income of the business.

**791.09 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, there is hereby levied, and shall be collected, a tax equal to 0% of the gross income of any such business.

**797.10 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 the city, or any interest therein, for hire, loan, lease or otherwise, whether the return be in the form of rentals, royalties, fees or otherwise, the tax shall be 0% of the gross income of any such activity.

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

**791.11 BANKING BUSINESS AND OTHER FINANCIAL ORGANIZATIONS.**

Upon every person engaging or continuing within the city in the business of banking or financial business, the tax shall be equal to one percent (1.0%) of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property.

Provided, however, that gross income shall not include:

- (a) Interest received on the obligations of the United States, its agencies and instrumentalities;
- (b) Interest received on the obligations of this or any other state, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia;
- (c) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by non-transients; provided, further, that all interest derived on activities exempt under 791.11 (a) through (c) above shall be reported, as to amounts, on the return of a person taxable under the provisions of this Section.

Gross income of a banking or financial business from whatever source derived, shall be taxable under this Section only and persons taxed pursuant to the provisions of this Section shall not be taxed by any other sections of this Article.

**791.12 HEALTH MAINTENANCE ORGANIZATIONS.**

Upon the activity of a health maintenance organization holding a certificate of authority under the provisions of Article twenty-five-a [33-25A-1 et .seq.], chapter thirty-three of the W.Va. State Code, the amount of such tax shall be 0% applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the public employees insurance agency pursuant to article sixteen [§5-16-1 et seq.], chapter five of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall be 0% applied to the gross income received from enrollees, or from employers on behalf of

enrollees, from sources other than Medicaid, state employee programs administered by the public employees insurance agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization; provided, that this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in this state, whether such income is in the form of rentals or royalties.

Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

**791.20 EXEMPTIONS.**

The provisions of this Article shall not apply to:

- (a) Insurance companies which pay the state a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the city, whether such income is in the form of rentals or royalties;
- (b) Non-profit cemetery companies organized and operated for the exclusive benefit of their members;
- (c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article 7 of chapter 60 of the Code of West Virginia;
- (d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;
- (e) Production credit associations, organized under the provisions of the federal Farm Credit Act of 1933; provided, that the exemptions of this Section shall not apply to corporations or cooperative associations organized under the provisions of article 4 of chapter 19 of the Code of West Virginia;
- (f) Any credit union organized under the provisions of chapter 31 or any other chapter of the Code of West Virginia; provided, that the exemptions of this Section shall not apply to corporations or cooperative associations organized under the provisions of article 4 of chapter 19 of the Code of West Virginia;
- (g) Gross income derived from advertising service rendered in the business of radio and television broadcasting; and
- (h) The gross income or gross proceeds of sale of a gasification or liquefaction of coal project in the demonstration, pilot or research states; provided, that prior to the commencement of operation of any such project, the tax commissioner of the state shall have first certified the project as

eligible for such exemption; provided, further, that such exemption shall expire seven years from the date the project first receives gross income or gross proceeds from sales.

**791.21 CREDIT.**

There shall be a credit in the amount of \$12.50 per quarter in amount of tax computed under this Article. A person exercising a privilege taxable hereunder for a fractional part of a quarter shall be entitled to a credit of the sum bearing the proportion to \$12.50 that the period of time the privilege bears to the entire quarter. When a credit is not used in full in one quarter, the unused portion shall not be carried forward in subsequent quarterly periods.

**791.22 TAX CUMULATIVE.**

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

**791.23 COMPUTATION OF TAX; PAYMENTS; RETURN AND REMITTANCE.**

The 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 taxpayer shall, within one month from the expiration of each quarter, make out a return upon a form prescribed by the City Finance Director, showing the gross proceeds of sales, or gross income of business, trade or calling and compute the tax for which he is liable for such quarter, sign it and mail it, together with a remittance, to the office of the City Finance Director. Such return shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the president, vice president, secretary or treasurer of a corporation, if made on behalf of the corporation. If made on behalf of a partnership, joint venture, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, group or unit shall take the oath on behalf of the taxpayer.

All remittances of taxes imposed by this Article shall be made to the City of Weirton, in lawful money of the United States or by bank draft, certified check, cashier's check, or money order, who shall pay the money into the city treasury, to be kept and accounted for as provided by law.

The City Finance Director, if he/she deems it necessary to insure payment of the tax, may require the return and payment under this Section for other than quarterly periods.

**791.24 PAYMENT PLANS**

The City Finance Director may extend the time for payment of an amount determined as a deficiency for a period not to exceed twelve months from the date designated for payment of the deficiency. An extension of this time may be granted only where it is clearly established to the satisfaction of the City Finance Director that the payment of a deficiency upon the date designated for payment would result in undue hardship.

If any extension of time is granted for payment of any deficiency, the City Finance Director may require the taxpayer to furnish a bond or other security, in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the City Finance Director may require.

#### **791.25 RECORDS, STATEMENTS AND INVESTIGATIONS.**

For the purpose of ascertaining the correctness of a tax return or an assessment or for the purpose of making an estimate of any taxpayer's liability for the tax administered under this article, the City Finance Director shall have the power to examine or cause to be examined, by any agent or representative designated by the City Finance Director, any books, papers, records, memoranda or other documents bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge of the matters contained therein. In connection therewith, the City Finance Director may take testimony and shall have the power to administer an oath to such person or persons.

#### **791.26 CONFIDENTIALITY AND DISCLOSURE OF RETURNS.**

- (a) Secrecy of Returns. Except when required in an official investigation into the amount of tax due the city or in any proceeding before a court of competent jurisdiction to collect or ascertain the amount of such tax, and except as provided in subsection (b) and (c), hereof no officer, employee or agent of the city shall divulge or make known in any manner the tax return, or any part thereof, of any individual, firm or corporation, or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the city.

Any officer, employee or agent of the city or any former officer, employee or agent of the city who makes unauthorized disclosure of information received from the state tax commissioner pursuant to a reciprocal exchange agreement between this city and state tax commissioner, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than thirty days, or both fined and imprisoned.

For the purposes of this section, "unauthorized disclosure" means the release to any person of any tax information obtained by the city from the state tax commissioner, unless:

- (1) The person receiving the information is the authorized counsel of the state or the city and shall be using the information only for the purpose of administering business or occupation tax, liquor sales tax or sales tax or both from a single location business; or
- (2) The person who files the return has authorized, in writing, its release, thereby waiving his or her right to secrecy.

Any officer, employee or agent of the city or former officer, former employee or former agent who violates this subsection, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than thirty days, or both fined and imprisoned.

Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this subsection for such purpose and such period as he shall therein state and the City Finance Director, if he/she so determines, may thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the city's taxing regulations.

This subsection shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular reports and the items thereof.

- (b) Reciprocal Exchange. The City Finance Director may permit the proper officer of the United States, the State the District of Columbia or any other state, or any political subdivision of the State, or his or her authorized representative to inspect reports, declarations or returns filed with the City Finance Director or may furnish to such officer or representative a copy of any such document, provided such other jurisdiction grants substantially similar privileges to the city.
- (c) Inspection of Business and Occupation Tax Returns by State Tax Commissioner. The City Finance Director shall, upon the written request of the State Tax Commissioner or his designated agent, allow such commissioner or his duly authorized agent to inspect and make copies of the City Business and Occupation Tax returns filed by taxpayers of the city, for the purpose of securing information for State tax purposes, provided the State allows the City Finance Director the right to inspect or make copies of the State Business and Occupation Tax returns of such taxpayer.

**791.27 MATHEMATICAL ERRORS; COLLECTION OF BALANCE DUE ON RETURN WITHOUT REMITTANCE.**

When it appears to the City Finance Director that the taxpayer has made a mathematical error, the City Finance Director shall correct such error and notify the taxpayer, in writing, of the deficiency in the tax. The taxpayer shall have fifteen days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the City Finance Director shall make an assessment of such deficiency in accordance with Section 791.28 and shall give the taxpayer written notice thereof.

If a taxpayer files a mathematically correct return which reflects a balance due of the tax administered under this Article, and if full payment thereof has not been made, the City Finance Director shall notify the taxpayer, in writing, of the amount of tax, penalties and interest due. The taxpayer shall have fifteen days after receipt of such notice within which to make such payment. If the taxpayer fails to make payment within such fifteen day period, the City Finance Director shall proceed to collect the amount due.

**791.28 ASSESSMENT OF TAX WHEN INSUFFICIENTLY RETURNED.**

If the City Finance Director believes that the tax imposed by this Article has been insufficiently returned by a taxpayer, because the taxpayer has failed to properly remit the tax, 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. Assessments shall be served upon the taxpayer either personally or by certified mail.

**791.29 NOTICE OF ASSESSMENT; PETITION FOR REASSESSMENT OR PAYMENT OF ASSESSMENT WITHIN SIXTY DAYS; FINALITY OF ASSESSMENT; PAYMENT OF FINAL ASSESSMENT.**

- (a) Notice of assessment. The City Finance Director shall give the taxpayer written notice of any assessment or amended or supplemental assessment made pursuant to this Article. The assessment or amended or supplemental assessment, as the case may be, shall become final and conclusive on the liability of the taxpayer and not subject to either administrative or judicial review unless the taxpayer to whom a notice of assessment or amended or supplemental assessment, is given, shall within sixty days after service thereof either:

- (1) Petition for reassessment -- Personally or by certified mail, files with the City Finance Director 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 such objections; or

(2) Payment of assessment -- Personally or by certified mail, remits to the City Finance Director the total amount of the assessment or amended or supplemental assessment, including such additions to tax and penalties as may have been assessed and the amount of interest due, with copy of such payment to the City Finance Director.

(b) Finality of assessment. The amount of an assessment or amended or supplemental assessment shall be due and payable on the day following the date upon which the assessment or amended or supplemental assessment becomes final. Payment of the amount of the assessment, or amended or supplemental assessment, as provided in subdivision (2), above, within sixty days after service of notice of such assessment shall not prohibit or otherwise bar the taxpayer from filing a claim for refund or credit under the provisions of this Article within the time prescribed therein for filing of a claim for refund or credit.

(c) Payment of assessment after petition filed. A taxpayer who has timely filed a petition for reassessment may, at any time prior to issuance of the City Finance Director's administrative decision, pay under protest the amount of the assessment. Upon such payment, the contested case shall thereafter be treated for all purposes as a petition for refund; provided, that if payment is made after the administrative hearing has commenced or concluded, a new hearing shall not be held, but the record thereof, shall be properly amended by the City Finance Director to show that the amount assessed has been paid under protest by the taxpayer and that the petition for reassessment previously filed under this Section is now to be treated as a petition for refund.

### **791.30 HEARING PROCEDURE.**

When a petition for reassessment or a petition for refund or credit is filed within the time prescribed by said sections for such filing, or a hearing is requested pursuant to the provisions of this Article, the City Finance Director 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 twenty days in advance thereof. Such hearing shall be held within ninety days from the date of filing the petition or other written request for hearing unless continued by agreement of the parties or by the City Finance Director for good cause.

The hearing shall be informal and shall be conducted in an impartial manner by the City Finance Director or a hearing examiner designated by the City Finance Director. 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.

After any hearing as above provided for, the City Finance Director shall, within a reasonable time give notice in writing of his decision. Unless an appeal from the decision of the City Finance Director rendered in any such hearing is taken, within sixty days after service of such notice, the City Finance Director's decisions shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, due the City 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 be credited to the taxpayer.

**791.31 APPEALS.**

- (a) A taxpayer may appeal the administrative decision of the City Finance Director by taking an appeal to the Circuit Court within sixty days after being served with notice of the administrative decision.
  
- (b) Petition for appeals -- The appeal proceeding shall be instituted by filing a petition with the circuit court, or the judge thereof in vacation, within the sixty day period prescribed in subsection (a).
  
- (c) Hearing of appeal -- The court may hear the appeal and determine anew all questions submitted to it on appeal from the determination of the City Finance Director. In such appeal, a certified copy of the City Finance Director's notice of assessment or amended or supplemental assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this Article. 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 City Finance Director who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the City Finance Director to the Supreme Court of Appeals of this state.

**791.32 METHODS OF COLLECTION.**

The City Finance Director shall collect the taxes, interest and penalties imposed by this Article. In addition to all other remedies available for the collection of debts-due the city, the City Finance Director may proceed by foreclosure of the lien provided in Section 791.33 or by distraint and sale under Section 791.34.

**791.33 TAX CONSTITUTES DEBT; LIEN CREATED; ENFORCEMENT OF LIEN.**

Any tax, penalties or interest due and payable under this Article shall be a debt due the city. It shall be a personal obligation of the taxpayer and shall be a lien upon the real and personal property of the taxpayer. This lien shall have priority over all other liens except those due the state and the United States of America.

The lien created by this Section shall continue until the liability for the tax, interest and penalties is satisfied or becomes unenforceable, by reason of lapse of time. The City Finance Director shall issue his certificate of release of any lien imposed pursuant to this Section upon finding that the liability for the amount assessed has been fully satisfied or has become legally unenforceable.

The lien created by this Section shall be subject to the restrictions and conditions embodied in Article 10C of Chapter 38 of the Code of West Virginia.

**791.34 DISTRAINT.**

If the tax administered under this Article 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 a proper assessment of tax is made by the City Finance Director and such assessment has become final and is not subject to administrative or judicial review, the City Finance Director may distraint upon and sell the real and personal property including intangibles represented by negotiable evidence of indebtedness of the taxpayer, for the payment of the amount of all taxes, penalty and interest accrued and unpaid under this Article. The warrant created by this Section may be served by a police officer of the city or by the sheriff of the county in which the delinquent taxpayer resides or his property is situate.

**791.35 INJUNCTION.**

If the failure of any taxpayer to comply with the provisions of this Article shall have continued sixty days, the City Finance Director may proceed to obtain an injunction restraining the taxpayer from doing business in the city 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.

**791.36 REFUNDS.**

Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this Article shall file his claim within three years after the due date of the fourth quarter 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.

**791.37 LIMITATION ON ASSESSMENTS.**

The amount of tax, interest and penalties imposed by this Article shall be assessed within three years after the due date of the fourth quarter return for the year in which such tax arose; 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.

**791.38 INTEREST AND PENALTIES.**

- (a) The tax imposed by this Article, if not paid when due, shall bear interest at the rate of eight percent per annum (8%) from the due date of the return until paid.
- (b) If any taxpayer fails to make the return required by this Article, 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, a penalty in the amount of 5% of the amount of such tax for the first month, or fraction thereof, of delinquency and 5% of the amount of such tax for each succeeding month, or fraction thereof, of delinquency, not exceeding 25% in the aggregate.
- (c) If any taxpayer fails to pay the amount shown as tax on any required return of the tax required by this Article on or before the date prescribed for payment of such tax, 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 a penalty in the amount of 0.5% of the amount of such tax for the first month, or fraction thereof, of delinquency and an additional 0.5% of the amount of such tax for each succeeding month, or fraction thereof, of delinquency, not exceeding 25% in the aggregate.
- (d) Interest and penalties may be collected in the same manner as the tax imposed by this Article.

**791.39 PAYMENT WHEN PERSON SELLS OUT OR OUI TS BUSINESS; LIABILITY OF SUCCESSOR; LIENS.**

If any person subject to the tax administered under this Article sells out his or its business or stock of goods, or ceases doing business, any tax, penalties and interest imposed by this Article shall become due and payable immediately, and such person shall, within thirty days after selling out his or its business or stock of goods or ceasing to do business, make a final return and pay any tax that may be due. The unpaid amount of any such tax shall be a lien upon the property of such person.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy any tax, penalties and interest which may be due until the former owner shall produce a certificate from the City Finance Director 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, penalties and interest remain unpaid after expiration of the thirty-day period allowed for payment thereof, the purchaser shall be personally liable for the payment of any such tax, penalties and interest, and the same shall be recoverable by the City Finance Director.

**791.40 SETTLEMENT OF CONTRACTS MADE WITH CITY.**

All officers, employees and agents making contracts on behalf of the city shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the City Finance Director that all taxes levied or assessed under this Article against the contractor with respect to such contracts have been paid.

**791.41 FINAL SETTLEMENT WITH NONRESIDENT CONTRACTOR; USER PERSONALLY LIABLE.**

Any person contracting with a nonresident person engaged in a business or service taxed under this Article shall withhold payment, in sufficient amount to cover taxes assessed by this Article, in the final settlement of such contracts until the receipt of a certificate from the City Finance Director to the effect that all taxes levied and accrued under this Article against the contractor have been paid.

If any person shall fail to withhold as provided herein, he shall be personally liable for the payment of all such taxes, and the same shall be recoverable by the City Finance Director by appropriate legal proceedings.

**791.42 LIMITED EFFECT OF CITY FINANCE DIRECTOR'S CERTIFICATE.**

The certificates of the City Finance Director provided for in Sections 791.39-791.41 inclusive, shall not bar subsequent investigations, examinations, audits, assessments and refunds with respect to the taxpayer.

**791.43 OFFENSES.**

It shall be unlawful for any person to refuse to make the return required to be made in Section 791.23, or to make any false or fraudulent return or false statement in any return with the intent to defraud the city, or 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.

**791.44 PENALTY.**

Any person who violates the provisions of this Article by refusing to make the returns required or makes a false or fraudulent return or false statement in any return with intent to defraud the city or to evade the payment of tax, or any part thereof shall be guilty of a misdemeanor and shall be fined the sum of not more than five hundred dollars (\$500) or be imprisoned not more than thirty (30) days, or both for each violation.

**791.45 ADMINISTRATION AND ENFORCEMENT.**

The administration of this Article is vested in, and shall be exercised by, the City Finance Director, who shall prescribe forms and reasonable rules of procedure 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 City Finance Director, who shall require the assistance and act through the City Attorney.

Notwithstanding the foregoing, upon recommendation and request of the City Finance Director, Council may authorize any legal contractual arrangement it may deem appropriate with any individual, partnership, corporation or any other entity to assist the City Finance Director in the assessment and collection of the taxes imposed by this Article, and in the enforcement of any of the provisions of this Article in any of the courts of this State, the amount and method of compensation for said services to be determined by Council.