

# **CITY OF FAIRMONT**

## **ADMINISTRATIVE RULES UNDER BUSINESS AND OCCUPATION TAX CODE 761.28**

### **1.0 Imposition of Business and Occupation Tax**

- 1.1 The burden for payment of Business and Occupation Tax under City Code Article 761 is imposed upon every person engaging in business within the City of Fairmont with the object of 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" is defined in Article 761 and 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 as set forth in Section 761.01 (b) and shall include the activities of contracting as set forth in Section 761.01 (d) and service businesses as set forth in Section 761.01 (i).
- 1.2 Annual privilege taxes shall be levied against 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 or gross proceeds as set forth in Section 761.03 to 761.11.
- 1.2.1 Severance, extraction and production of Coal, Limestone or Sandstone, Oil, Blast Furnace Slag, Sand, Gravel or Other Mineral, Timber, and Other Natural Resource Products - one percent (1%).
  - 1.2.2 Severance, extraction and production of Natural Gas, in excess of five thousand dollars (\$5,000.00) - three percent (3%).
  - 1.2.3 Manufactured, Compounded, or Prepared Products and Processing of Foods - twenty-two hundredths of one percent (0.22%).
  - 1.2.4 Selling Tangible Property- thirty-nine hundredths of one percent (0.39%) except that in the business of selling at wholesale the tax shall be fifteen hundredths of one percent (0.15%).
  - 1.2.5 Public Service or Utility Business of Street and Interurban and Electric Railways – one-fifth of one percent (0.2%).
  - 1.2.6 Public Service or Utility Business of sales and demand charges for domestic purposes and commercial lighting of Electric Light and Power Companies – four percent (4%) and three percent (3%) on sales and demand charges for all other purposes.
  - 1.2.7 Public Service or Utility Business of gross income on Natural Gas Companies after deducting all sales of gas to consumers the amount of the tax paid by the taxpayer under WV Code §11-13-2A, on production of the same gas – three percent (3%).
  - 1.2.8 All Other Public Service or Utility Business – one percent (1%).
  - 1.2.9 Contracting – two dollars (\$2.00) per one hundred dollars (\$100.00).
  - 1.2.10 Amusements; gross income of operating a Theater, Moving Picture Show, Vaudeville, Amusement Park, Dance Hall, Skating Rink, Race Track or

any other place at which amusements are offered – forty-four hundredths of one percent (0.44%).

1.2.11 Banking or Financial Business – one percent (1%) 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 interest received on obligations of the United States, its agencies and instrumentalities, the State of West Virginia or any political subdivision of the State, or interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by non-transients; provided that all interest derived on exempt activities shall be reported on the return.

1.2.12 Gross income of any Service Business or Calling not otherwise specifically taxed under this article – seventy hundredths of one percent (0.70%).

## **2.0 Persons Taxable on Multiple Activities – Credits and Exemptions**

2.1 A person taxable under Section 761.05 with respect to selling products at wholesale within the City of Fairmont shall be allowed a non-refundable credit against those taxes for any manufacturing taxes paid by such person with respect to the manufacturing of products so sold as wholesale in this City, and/or extracting taxes paid by such person with respect to the extracting of products so sold in this City or ingredients of products so sold at wholesale in this City.

2.2 There shall be allowed to taxpayers a credit against the Business & Occupation Tax imposed if a new industry is located within this City or there is an expansion of existing industry within this City which results in new jobs within the City limits.

2.2.1 There are two prerequisites that must be met before a credit will be allowed. The taxpayer must show to the Finance Director that the business will have a reasonable capability of enduring for at least seven years and that the minimum number of employees, as defined in Section 761.12, will be working full-time during that entire seven-year period.

2.2.2 The amount of credit will be a set percentage of the taxpayer's total City tax obligation and according to Section 761.12 (c), (d), and (e). However, for a single year or cumulatively, the total credits allowed shall not exceed the total cost of the taxpayer's qualified investment or the tax obligation for that year.

2.3 Exemptions from the Business and Occupation tax include the following:

2.3.1 Insurance companies which pay the State of West Virginia a tax upon premiums. Provided, however, that this exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, whether in the form of rents or royalties, or that part of the gross income of insurance companies which is received by

commissions or other methods without paying a tax to the State of West Virginia based upon premiums.

- 2.3.2 Mutual savings banks not having a capital stock represented by share and nonprofit mutual building and loan associations operated for the exclusive benefit of their members or any credit union organized under the provisions of West Virginia Code §31-1-1.
- 2.3.3 Gross income derived from providing advertising services rendered in the business of radio and television broadcasting.
- 2.3.4 Nonprofit cemetery companies operated for the exclusive benefit of their members.
- 2.3.5 Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit.
- 2.3.6 Corporations, associations and societies organized and operated exclusively for religious and charitable purposes.

### **3.0    Forms and Payment**

- 3.1    The forms shall be prepared by the Director of Finance and made available to all taxpayers at the Finance Department. Forms will be mailed to all taxpayers within forty-five days of due date by the Finance Department. Otherwise forms are available on the City of Fairmont’s website at [www.fairmontwv.gov](http://www.fairmontwv.gov). Forms can be photocopied. Failure to receive the forms shall not in any way reduce the liability of a taxpayer under provisions of Article 761 to report and remit the Business and Occupation Tax.
- 3.2    The taxes are due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue, unless provided for in subsection 3.3, subsection 3.4 or subsection 3.5. All properly paid installments are to be treated as estimate payments to be credited against the total tax due at the end of the tax year.
- 3.3    For taxpayers whose estimated tax exceeds one thousand dollars (\$1,000.00) per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued.
- 3.4    For any person classified as “Handyman” and/or any person, firm or corporation engaging or continuing within the City in the business of contracting and if such person, firm or corporation is without established credit with the City or if such person, firm or corporation has been delinquent in the payment of Business and Occupation Tax for two or more prior periods or if such person, firm or corporation has failed to pay Business and Occupation Tax for two or more prior periods and/or if such person, firm or corporation has failed to file a tax return for two or more prior periods, the tax shall be calculated upon application for a building permit and the entire amount of tax due from prior periods including penalty and interest due and the tax calculated on the amount of the building permit then applied for shall be due and payable prior to or at the time of issuance of the building permit. If a taxpayer has paid tax on the amount of the building permit and subsequently cancels or closes the permit without performing work, the taxpayer has the right to claim a refund of the tax paid under section 10.0.

3.5 For any person, firm or corporation engaging or continuing within the City in the business of contracting and who is a nonresident of the State of West Virginia, and who is without established credit with the City, the tax shall be calculated upon application for a building permit and the entire amount of tax due on the amount of the building permit then applied for shall be due and payable prior to or at the time of issuance of the building permit. In lieu of such payment in cash, any nonresident may guarantee the payment of such Business and Occupation Tax by delivering to the City a bond with good and adequate surety, payable to the City, and conditioned to pay such tax on or before the estimated date of the completion of the work to be performed by such person within the City. If a taxpayer has paid tax on the amount of the building permit and subsequently cancels or closes the permit without performing work, the taxpayer has the right to claim a refund of the tax paid under section 10.0.

3.6 Any person, firm or corporation engaging or continuing within the City in the business of contracting must furnish a list of the names, addresses and amounts paid by them to any subcontractors employed and suppliers of materials used upon any job or to do any work within the City.

3.7 Any person, firm or corporation contracting with a person, firm or corporation engaged in a business or service that requires the payment of Business and Occupation tax to the City shall withhold payment in the final settlement of such contracts in sufficient amount to cover taxes assessed until the receipt of a certificate from the Finance Director to the effect that all taxes levied and accrued against the contractor have been paid.

#### **4.0 Penalty for Nonpayment**

4.1 If any taxpayer fails to make the return required by Article 761 for Business and Occupation taxes, 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 (5%) of the tax for the first month, or fraction thereof, of delinquency and one percent (1%) of the tax for each succeeding month, or fraction thereof, of delinquency; provided however, that if such failure is due to reasonable cause, the Collector may waive or remit in whole or in part these penalties.

4.2 If the failure to pay is due to fraud or intent to evade Business and Occupation taxes, there shall be added an additional penalty of twenty-five percent (25%) of the amount of the tax, exclusive of penalties.

4.3 The penalties so added shall be collected at the same time and in the same manner and as a part of the tax.

## **5.0 Interest Added**

**5.1** In the case of an underpayment of estimated tax due or if a taxpayer 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, interest in the amount of eight percent (8%) per annum. An underpayment of estimated tax means the application of rates against estimated values of gross income which constitutes less than eighty percent (80%) of actual receipts.

## **6.0 Erroneous Computation**

**6.1** If the taxpayer makes any clerical error which is apparent on the face of the return in computing the tax assessable against him, the Collector shall correct such error or reassess the proper amount of taxes and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer shall be liable shall be paid within fifteen days after the receipt of such statement. If the taxpayer fails to make such payments, the taxpayer shall be considered delinquent and the Collector shall proceed to collect the amount due.

## **7.0 Assessment of Tax when Insufficiently Returned**

**7.1** If the collector believes that the tax imposed 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, the Collector shall investigate and determine or estimate the tax liability of the taxpayer and make an assessment from any information available. The amount assessed shall be immediately due and payable. The Collector may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the Collector ascertains that such an assessment is improper or incomplete in any material respect.

**7.2** The Collector may, at any time within the period prescribed for the assessment make a supplemental assessment whenever he ascertains that any assessment is imperfect or incomplete in any material respect.

**7.3** If any person assessed and having made the return and paid the tax, feels aggrieved by the assessment(s) so made upon him for any year by the Collector he shall apply to the Finance Director by petition, in writing, within twenty days after the notice of a jeopardy assessment or within sixty days after notice of a general assessment or reassessment has been served upon him by the Collector, for a hearing and a correction of the amount of the tax assessed upon him by the Collector, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. Unless the petition is made within the allotted amount of time, twenty days for a jeopardy assessment or sixty days for a general assessment, such assessment shall become final. The Finance Director shall promptly consider all such punctual petitions, and may grant

such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof. If granted the Finance Director shall notify the petitioner of the time and place so fixed for such hearing. After such hearing the Director may make such order in the matter as may appear to be just and lawful, and shall furnish a copy of such order to the petitioner within thirty days of the date of the hearing.

## **8.0 Investigation and Subpoena Power**

8.1 For the purpose of ascertaining the correctness of any tax return or assessment and for the purpose of making an estimate of any taxpayer's liability for Business and Occupation Tax, the Collector shall have the power to examine, audit, or cause to be examined, or audited by any agent or representative designated by the Collector, any books, papers, records, memoranda, inventory or equipment bearing upon the matters required to be included in the tax return, may make test checks of tax yield, and may require the attendance of the person rendering the tax return or the attendance of any other person having knowledge of the matters contained therein. At least five days notice of such examinations or audit shall be given to all taxpayers to be examined, but such notice may be of an informal nature, such as by telephone or general mail.

8.2 The Collector shall issue subpoenas and subpoenas duces tecum, in the name of the City, and compel attendance of witnesses and the production of books, papers records, documents, and testimony at the time and place specified. Every such subpoena or subpoena duces tecum shall be served at least five days before the return date thereof by personal service. Any person, except a person in the employ of the Finance Department who serves such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the Circuit Courts of West Virginia.

## **9.0 Appeal**

9.1 An appeal may be taken by the taxpayer to the Circuit Court of Marion County within thirty days after he has received notice from the Director of Finance of his determination on the petition. The petition for appeal and notice thereof shall be served on the City in the manner provided by the West Virginia Rules of Civil Procedure for the service of original process.

9.2 The appellant shall file with the Clerk of the Circuit Court a bond for the use of the appellee, with sureties approved by the Clerk, the penalty of the bond to be not less than the total amount of the tax and penalties appealed from, and conditioned that the appellant performs the orders of the Court; except that in lieu of such bond, the Director may upon proper showing find and certify to the Clerk that the properties of the appellant subject to the liens imposed are adequate to secure the performance or the orders of the Court. Any discretionary decision respecting an appellant's appeal bond made by the Director of Finance is subject to full judicial review if an application for such review is filed with the Circuit Court within thirty (30) days of such decision.

9.3 The Court shall hear the appeal upon the record made before the hearing examiner and no additional evidence shall be taken unless otherwise required. The Court shall render its decree thereon and the Director shall then conform the assessment to the decree. An appeal may be taken by the taxpayer or the Director to the Supreme Court of Appeals of West Virginia.

## **10.0 Refunds and Credits**

10.1 Any taxpayer claiming to have overpaid any tax, interest or penalty shall file his claim with the Director of Finance within three years after the due date of the return determined by including any written authorized extension of time for filing, in respect of which the tax was imposed or within one year 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.

10.2 If, on such petition and the proofs filed in support thereof, the Director of Finance shall be of the opinion that the tax, interest and penalty, or any part thereof, was overpaid, he shall refund the same to the taxpayer. If the Director of Finance shall be in doubt as to whether or not there exists an overpayment, he may institute against the taxpayer a declaratory judgment proceeding in the Circuit Court. Taxpayer's failure to abide by express procedures outlined in this document and in Article 761 of the City Code precludes taxpayer's claim for refund or credit.

## **11.0 Penalty**

11.1 No person shall refuse to make a return or make any false or fraudulent return or false statement in any return, with the intent to defraud the City or evade the payment of the tax, or any part thereof, or shall aid or abet another in any attempt to evade the payment of the tax, or any part thereof; nor shall the president, vice-president, secretary or treasurer of any corporation make or permit to be made for any corporation or association any false return, or any false statement in any return, with the intent to defraud the City or evade the payment of the tax.

11.2 Whoever violates any provision of Section 761 of the City Code shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding thirty days (30) or both. In addition to the foregoing penalties, whoever knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing any false or fraudulent statement as aforesaid, shall be fined not more than five hundred dollars (\$500.00).

EFFECTIVE FOR ALL TAXES PAYABLE ON OR AFTER JULY 1, 2013