

AN ORDINANCE OF THE CITY OF WESTON, WEST VIRGINIA, AMENDING ARTICLE IV OF CHAPTER TWENTY-SEVEN OF THE CODE OF THE CITY OF WESTON TO AMEND ARTICLE IV -- BUSINESS PRIVILEGE OR GROSS SALES TAX OF THE CODIFIED ORDINANCES OF THE CITY OF WESTON, WEST VIRGINIA, 1972, AS AMENDED, BY AMENDING AND RE-ENACTING ARTICLE IV TO PROVIDE FOR AN INCREASE IN FEES FOR THE CLASSIFICATIONS OF RETAIL AND MANUFACTURING AND TO PROVIDE FOR AN IMPROVED ENFORCEMENT MECHANISM; REPEAL OF CONFLICTING ORDINANCES.

NOW, THEREFORE, BE IT ENACTED BY THE COMMON COUNCIL OF THE CITY OF WESTON AND THE COMMON COUNCIL OF THE CITY OF WESTON HEREBY ORDAINS:

CHAPTER 27. AMENDMENT TO ARTICLE IV ENTITLED BUSINESS AND TAXATION CODE

WHEREAS, as provided for in the West Virginia Code Chapter 8, Article 13, Section 5, the City of Weston, being a municipal corporation of the State of West Virginia, has plenary power and authority to impose a business and occupation tax upon any business activity or occupation, for which the State imposes its annual business or privilege tax under Chapter 11, Article 13 of the West Virginia Code, which is engaged in or carried on within the corporate limits of the municipality; and

WHEREAS, the City Council has determined that the business and occupation taxes are a vital part of the City's annual revenue; and

WHEREAS, the City Council has determined that enforcement mechanisms for the collection of business and occupation taxes should be improved.

NOW THEREFORE, BE IT ENACTED by the City Council of the City of Weston, West Virginia, that Chapter 27, Part IV of the Code of the City of Weston, West Virginia, 1972, as amended, be amended to read as follows:

Sec. 27-10. Definitions.

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

- (a) "Amusement" or "operating amusement" means any person engaged in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, radio broadcast station or any other place at which amusements are offered to the public.
- (b) "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, credit union, finance company, investment company, investment broker or dealer and any other similar business organization at least ninety percent (90%) of the assets of which consists of intangible personal property and at least ninety percent (90%) of the gross receipts of which consists of dividends, interest and other charges derived from money or credit.

- (c) "Business" means all activities engaged or caused to be engaged in 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" 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 defined more fully below in Section 27-42.
- (d) "Contracting" means 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.
- (e) "Gross income" generally 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, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including 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 personal property or service, and without any deductions on account of 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 income" of a banking or financial business is specified in Section 27-42.
- (f) "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 the property sold or expenses of any kind. "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 sales of goods, wares or merchandise returned by customers when the sale price is refunded either in case 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 this State; or
 - (5) Money or other property received and 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 repaying of a debt of another.

"Deductions from gross receipts" that can be identified for audit purposes, and are exempt from Municipal privilege, business and occupation or gross sales, tax calculations include only the following sources of cash flow, and only when they can be identified within the books of original entry:

- A. That sum collected as a portion of rent from leases that has in advance been determined for a utility cost sharing for common "shared" services, such as electric, water, natural gas, etc.
- B. State consumer sales tax collected on behalf of the State on retail or wholesale sales, and

- shown as tax on any records of original entry.
- C. City amusement tax shown as a portion of a sales price for a ticket to an amusement, and identified as a tax.
 - D. State and federal fuel tax or surcharge collected as a portion of the retail price for the government, as allowed by the State for State business and occupation taxes.
 - E. Identified and documented bad debts originally reported as "gross sales" and paid as taxable, and since determined uncollectible. Provided, that if later collected, such taxes shall be paid on such amounts.
 - F. State and/or federal cigarette and cigar taxes collected as a part of the retail sales price, as allowed by the State.
 - G. Identifiable per bottle "pop" tax on each soft drink sold at retail and collected for the State.

To claim these deductions from "gross income" or "gross receipts" each taxpayer must complete the form provided to identify these claimed exemptions, and file the "schedule of deductions" with the tax return, for the period in which such deductions were earned.

- (g) "Person" or "company," herein used interchangeably, includes any individual, firm, copartnership, joint venture, association, corporation, trust 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. The word "it" shall also include the pronouns "he" and "she."
- (h) "Return" means any tax information return or report, declaration of estimated tax, claim, or petition for refund or credit, or petition for reassessment that is required by, or provided for, or permitted, under the provisions of this article which is filed with the Collector of Business Taxes by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments or lists which are supplemental to, or part of, the return so filed.
- (i) "Sale," "sales," or "selling" means any transfer of the ownership of, or title to, property, whether for money or in exchange for other property.
- (j) "Selling at wholesale" or "wholesale sales" means:
 - (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 institutions or political subdivisions.
- (k) "Service business" or "calling" means 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. This 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.
 - (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 service, except to persons taxed pursuant to the provisions of Section 27-42.
- (l) "Taxpayer" means any person liable for any tax hereunder.
- (m) "Tax year" or "taxable year" means either the fiscal year beginning on July 1 and ending on June 30 of the following year, or if the taxpayer keeps his books on a basis other than such fiscal year he may obtain permission from the Collector of Business Taxes to use the same as the tax period in lieu of the defined taxable year.

Sec. 27-11. Authority to Levy: Repeal of Conflicting Ordinances.

The City, pursuant to the provisions of West Virginia Code § 8-13-5, as amended, hereby adopts a tax and re-enacts and continues to use such existing tax not inconsistent herewith on business activities or occupations for use of such Municipality in accordance with the plenary power granted by the Legislature of the State in such Code provisions.

This tax and the re-enactment thereof shall be operative as of the first day of the current fiscal year, in accordance with West Virginia Code § 8-13-5 and each fiscal year thereafter unless further annulled.

All ordinances in conflict herewith are hereby repealed.

Sec. 27-12. Records.

A separate and complete record of business of the taxpayer conducted within this City shall be kept at his place of business and shall not be combined or confused with records of business carried on at other places. The Collector of Business Taxes may require the preservation of records for a period not to exceed five years.

Sec. 27-13. Schedule of Payment: Form of Return.

The taxes levied under this article shall be payable in quarterly installments on or before the expiration of thirty days from the end of the quarter in which they accrue. The taxpayer shall, within thirty days from the end of the quarter, make out a return upon a form proscribed by the Collector of Business Taxes, showing the gross proceeds of sales, or gross income of business, trade or calling and compute the amount of tax for which he is liable for each quarter, sign the same and mail the same, together with a remittance in the form required by Section 27-20, for the amount of tax to the office of the Collector of Business Taxes. The Collector of Business Taxes, if he deems it necessary to insure payment of the tax may require return and payment under this section for other than quarterly periods. If for any reason it is not practicable for the individual taxpayer to make the payment, the same may be made by any duly authorized agent.

Sec. 27-14. Returns and Amount of Payment Confidential.

All the information contained in the returns provided for in this article and the amounts paid under the provisions hereof shall be confidential. No officer or employee shall make known any such information for any purpose other than for the reasons set forth in West Virginia Code § 11-10-5s or for the enforcement of this article and of the laws of the State and the United States of America. Nothing herein shall be deemed or interpreted to provide for a new or separate private right of action in the event of a violation or violations hereof, other than that which may already exist under the law.

Sec. 27-15. Failure to Make Return; Incomplete or Erroneous Return.

If any person fails to file any return required by this article at the time required by law or by regulation made under the authority of law, or makes and files willfully or otherwise, a false or fraudulent return, the Collector of Business Taxes may proceed to make such return from any information available to him, whether obtained through testimony or otherwise. The Collector of Business Taxes, or his delegate, shall have the power to issue subpoenas and subpoenas duces tecum as permitted by West Virginia Code § 11-10-5b and therefore may make examinations of the books, records, and papers and audit the accounts of any such person, including bank accounts, and may take the evidence, on oath, of any person who he may believe is in possession of any relevant information. As soon as possible after procuring such information as he may be able to obtain as to any person making an incomplete or incorrect return, or failing or refusing to make a return, the Collector of Business Taxes shall proceed to assess the tax and shall notify the person assessed of the amount of the tax. The assessment of the tax by the Collector of Business Taxes shall be final as to any person who has refused to make a return, subject to the provisions for appeal as set forth in Section 27-19 herein.

Sec. 27-16. Assessment.

If the Collector of Business Taxes believes that any tax administered under this Article has been 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 and make an assessment therefor including jeopardy and supplemental assessments in accordance with West Virginia Code § 11-10-7.

Sec. 27-17. Notice of Assessment.

Notice of assessments shall be served upon the taxpayer as provided in West Virginia Code § 11-10-5e.

Sec. 27-18. Abatement.

The Collector of Business Taxes is authorized to abate the assessment of any tax or any liability in respect thereto as provided in West Virginia Code § 11-10-7a.

Sec. 27-19. Appeals from Assessments; Correction; Recovery of Tax Improperly Charged.

If any person, having made a return and paid the tax as provided by this article, feels aggrieved by the assessment made upon him by the Collector of Business Taxes, he may file a petition for reassessment or for refund and a hearing shall be held as provided in West Virginia Code § 11-10-9. The petition filed shall set forth the reasons why such hearings should be granted and the amount that such tax should be reduced. After such hearing, a taxpayer may appeal the decision of the Collector of Business Taxes to the Circuit Court as provided in West Virginia Code § 11-10-10.

Sec. 27-20. Payments; Receipts; Accountability.

All remittances of taxes imposed by this article shall be made to the Collector of Business Taxes by bank draft, certified check, cashier's check, money order or certificate of deposit. The Collector of Business Taxes shall issue his receipts therefor to the taxpayers and the moneys shall be kept and accounted for as provided by law.

Sec. 27-21. Tax Cumulative; Exercise of Business Privilege Conditioned upon Payment of Tax.

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 or calling. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are conditions precedent to

exercising privilege taxes, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article.

Sec. 27-22. Lien for Unpaid Tax; Default.

Any tax, additions to 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. The lien shall be enforced pursuant to West Virginia Code §§ 11-10-16 and 11-10-18, and in conjunction with the procedures as set forth herein in Section 27-25.

Sec. 27-23. Additions to Tax.

If a taxpayer fails to file a return or fails to pay any amount in respect to any tax under this article, the Collector of Business Taxes may add to the amount required to be shown as tax on such return an additional amount as provided by West Virginia Code § 11-10-18.

Sec. 27-24. Interest.

If any amount of a tax administered under this article is not paid on or before the last day prescribed for payment, interest on such amount shall be paid as provided in West Virginia Code §§ 11-10-17 and 11-10-17a.

Sec. 27-25. Collection by Suit.

The Collector of Business Taxes may, by himself or a duly appointed agent, collect taxes due and unpaid under this article, together with all accrued penalties, and for such purpose may exercise all the power authorized for the collection of taxes under the Charter, this Business and Taxation section, other ordinances of the City of Weston and the laws of the State. After delinquency has continued for sixty days, the Collector of Business Taxes may proceed by himself or agent, in the circuit court of the County to obtain an injunction pursuant to West Virginia Code § 11-10-11(h) restraining the further exercise of the privilege until full payment has been made of all taxes and penalties due under this article. In any proceeding under this section upon judgment or decree for the plaintiff, the plaintiff shall be awarded his costs. The Collector of Business Taxes, or designated agent, may enforce liability by appropriate civil action in the circuit court of competent jurisdiction, in accordance with West Virginia Code § 8-13-15.

Sec. 27-26. Settlement Agreements and Compromises.

The Collector of Business Taxes is authorized to enter into an agreement in writing with any person relating to the liability of such person with respect to any tax administered by the Collector of Business Taxes under this article, for any taxable period. The Collector of Business Taxes is authorized to compromise or settle any tax due and owing the City in an amount less than or equal to \$10,000. For taxes in an amount over \$10,000, approval of any settlement or compromise must be obtained from the City Council.

Sec. 27-27. Tax Responsibility Upon Sale of Business; Liability of Purchaser.

The tax imposed by this article shall be a lien upon the property of any person subject to the provisions hereof who sells out his business or stock of goods or quits business, and such person is required to make the return provided for under Section 27-13 within thirty days after the date he sold out his business or stock of goods or quit business, and his successor in business is required to withhold a sufficient amount of the purchase money to cover the amount of such taxes due and unpaid until such time as the former owner produces a receipt from the Collector of Business Taxes showing that such taxes have been paid. If the purchaser of a business or stock of goods fails to withhold purchase money as above provided, and the taxes are 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. Such liability shall be established under the procedures as outlined in Section 27-25 herein.

Sec. 27-28. Recordation of Certificate of Assessment: Release of Lien.

The Collector of Business Taxes, for the more effective collection of the tax, may file with the Office of the Clerk of the County Commission of the appropriate jurisdiction, a certified copy of an assessment of taxes under this article for recordation, which shall thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the City as against all parties whose interest arose after such recordation, in accordance with the procedures as set forth in Section 27-25 herein.

Upon payment of taxes delinquent under this article, the lien of which has been recorded, the Collector of Business Taxes may 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 Office of the Clerk of the County Commission. The Office of the Clerk of the County Commission shall record such certificate in the book in which releases are recorded. From the date that such certificate is admitted to the record, the land of the taxpayer in the City shall be free from any lien for taxes under this article accrued to the date that the certificate is issued.

Sec. 27-29. Collection by Distrain.

The Collector of Business Taxes may distrain upon any goods, chattels or intangibles represented by negotiable evidence of indebtedness of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder.

Sec. 27-30. Payment Prerequisite to Final Settlement of Contracts for the City.

All officers 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 Collector of Business Taxes to the effect that all taxes levied or accrued under this article against the contractor with respect to such contracts have been paid.

Sec. 27-31. Prohibited Acts.

No person shall refuse to make the return provided to be made in Section 27-13, or make any false or fraudulent return or false statement in any return, with intent to defraud the City or evade the payment of the tax, or any part thereof, imposed by this article. No president, vice-president, secretary or treasurer of any corporation shall make or permit to be made for any corporation or association any false return, or any false statement in any return required by this article, with the intent to evade the payment of any tax hereunder.

Sec. 27-32. Administration of Article.

The administration of this article is vested in and shall be exercised by the Collector of Business Taxes who shall prescribe forms and reasonable rules or procedure in conformity with this article for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder. The Collector of Business Taxes may request any municipal police officer to assist in enforcing the provisions of this article as provided in West Virginia Code § 11-10-5i. The enforcement of any of this article in any court of the State shall be under the exclusive jurisdiction of the Collector of Business Taxes, who shall require the assistance of, and act through, the City Attorney.

Sec. 27-33. Production of Coal and Other Natural Resource Products.

Upon every person engaging or continuing within this City in the business of producing for sale, profit or commercial use any natural resource product, the amount of such tax shall be equal to the value of

the articles produced, as shown by the gross proceeds derive from the sale thereof by the producer, except as otherwise provided, multiplied by the respective rates as follows: coal, one percent (1%); limestone or sandstone quarried or mined, one and one-half percent (1.50%); oil, three percent (3%); natural gas in excess value of five thousand dollars, six percent (6%); blast furnace slag, three percent (3%); sand, gravel or other mineral product, not quarried or mined, three percent (3%); timber, one and one-half percent (1.50%); other natural resources, two percent (2%). The measure of this tax is the value of the entire production in this City, regardless of the place of sale, or the fact that the delivery may be made to points outside the City.

A person exercising privileges taxable under the other sections of this article, producing timber or other natural resource products, the production of which is taxable under this section, and using or consuming the same in this business, shall be deemed to be engaged in the business of producing natural resource products for sale, profit or commercial use, 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 such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products or like quality or character by other taxpayers, which rules the Collector of Business Taxes shall prescribe.

"Entire production within this City" shall be defined as those mineral or other natural resources which shall have been mined, quarried, or otherwise obtained within the City limits.

Sec. 27-34. Manufactured or Compounded Products.

Upon every person engaging or continuing within this 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 in part, any article, substance, commodity or electric power not produced by public utilities taxable under provisions of this article, the amount of the tax shall be equal to the value of the article, substance, commodities or electric power 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 hereinafter provided, multiplied by the rate of five one-hundredths of one percent (0.05%). The measure of this tax is the value of the entire product manufactured, compounded or prepared in this 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.

It is further provided, however, that in those instances in which the same person partially manufactures products within this City and partially manufactures such products outside this City, the measure of the tax under this section shall be that proportion of the sale price of the manufactured product that the payroll costs of manufacturing within this City 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 costs of operations in the City bears to the full cost of manufacture of the articles. Such proportion shall be determined upon petition to the Collector of Business Taxes for clarification.

Sec. 27-35. Selling Tangible Property: Exemptions.

Upon every person engaging within this City in the business of selling any tangible property whatsoever, real and personal, including the sale of food and the services incident to the sale of food in hotels, restaurants, cafeterias, confectionaries and other public eating houses, excepting 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 twenty one-hundredths of one percent (0.20%) of the gross income of the business except that in the case of a wholesaler, the tax shall be equal to fifteen one-hundredths of one percent (0.15%) of the gross income of the business. A person exercising any privilege taxable under Section 27-33 or 27-34 and engaging in the business of selling his natural resources or manufactured products at retail in this City shall be required

to make returns of gross proceeds of such retail sales and pay the tax imposed in this section for the privilege of engaging in the business of selling such natural resources or manufactured products at retail within this City. But any person exercising any privilege taxable under Sections 27-33 or 27-34 and engaging in the business of selling his natural resources or manufactured products to manufacturers or wholesalers and, in the case of limestone, sand, gravel or other mineral product, to commercial consumers, shall not be required to pay the tax imposed in this section for the privilege of selling such natural resource products or manufactured products at wholesale.

Manufacturers exercising any privilege taxable under Section 27-34 shall not be required to pay the tax imposed in this section for the privilege of selling their manufactured products for delivery outside of the City, but the gross income derived from the sale of such manufactured products outside of this City shall be included in determining the measure of the tax.

The provisions of this article shall not apply to performances sponsored by churches, charitable, civic, patriotic or religious associations, schools or academic institutions.

Sec. 27-36. Public Service and Utility Business.

Upon any person engaging or continuing within this City in any public service or utility business, except railroad, railroad car, express, water companies, pipe line, telephone and telegraph companies, water carriers by steamboat or steamship and motor vehicle carriers, there is 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 reserve rates as follows:

Street and interurban and electric railroads, one percent (1%); water companies, four percent (4%), except as to income received by municipally owned water plants; electric light and power companies, four percent (4%) on sales and demand charges for domestic purposes and commercial lighting, and three percent (3%) on sales and demand charges for all other purposes; natural gas companies, three percent (3%) on the gross income, such gross income for this purpose to be determined by deducting from the gross income from all sales of gas to consumers, the amount of tax paid by the taxpayer under Section 27-33 on the production of the same gas; and on all other public service or utility business, two percent (2%). 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.

All ordinances in conflict herewith are hereby repealed.

Sec. 27-37. Contracting.

Upon every person engaging or continuing within this City in the business of contracting, including both subcontractor and general contractor, the tax shall be equal to one and two tenths of a percent (1.2%) of the gross income of the business derived from contracts entered into prior to the first day of July, 1971, and by one and twenty-five hundredths percent (1.25%) of the gross income of the business from contracts entered into on or after the First day of July, 1971. Any person contracting with a nonresident contractor subject to the taxes imposed by this article shall withhold payment, in the final settlement of such contract, of such sufficient amount as will be sufficient to cover such taxes, until the receipt of a certificate from the Collector of Business Taxes to the effect that the taxes imposed on the nonresident contractor have been paid or provided for. It shall be the duty of the contractor to notify the owner that such monies are to be withheld from the final settlement of the contract. The owner, however, shall be ultimately liable for such amount should the contractor fail to pay such tax as required under this article.

Sec. 27-38. Operating Amusements.

Upon every person engaging or continuing within this City in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, radio broadcast station or any other place at which amusements are offered to the public, the tax shall be equal to

one-half of one percent (0.50%) of the gross income of the business.

The provisions of this article shall not apply to performances sponsored by churches, charitable, civic, patriotic or religious associations, schools or academic institutions.

Sec. 27-39. Furnishing Property for Hire, Lease, Etc.

Upon every person engaging or continuing within this 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 be in the form of rentals, royalties, fee or otherwise, the tax shall be one percent (1%) of the gross income of any such activity. There is excepted, however, from the provisions of this section the first one thousand five hundred dollars (\$1,500) of rent collected by any person from the rental and residentially occupied real estate.

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

Sec. 27-40. Small Loan Business.

Upon every person engaging or continuing within this City in the business of making loans of money, credit, goods or other things in action, there shall be collected a tax equal to one percent (1%) of the gross income of any such business; provided, that such tax shall apply only to the gross income received prior to July 1, 1971. Persons subject to the provisions of this section on and after July 1, 1971 are subject to the provisions of Section 27-42.

Sec. 27-41. Service Business or Calling Not Otherwise Specifically Taxed.

Upon every person engaging or continuing within this City in any service business or calling not otherwise specifically taxed under this article, unless exempted by some provision of this article, there is likewise hereby levied and shall be collected a tax equal to six tenths of one percent (0.60%) of the gross income of any such business.

Sec. 27-42. Banking and Other Financial Business; Legislative Findings.

Upon every person engaging or continuing within the State in the business of banking or financial business, from and after July 1, 1971, the tax shall be equal to three-quarters of one percent (0.75%) 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. 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; or
- (c) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients. However, all interest derived on activities exempt under subsection (c) hereof, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section; and
- (d) Such other exemptions as defined in West Virginia Code § 11-24-6(f)(1)(A) to (f)(1)(D).

Businesses taxed pursuant to the provisions of this section shall not be taxed under Sections 27-33 through 27-41.

Council hereby finds and declares that it is the intent of the Council to subject national banking associations and other financial organizations to the tax imposed by this article, in accordance with the

authorization contained in Section Five Thousand Two Hundred Nineteen (§5219) of the Revised Statutes of the United States as amended by Public Law 91-156 enacted the Twenty-Fourth day of December, 1969.

Businesses taxed pursuant to this section shall apportion their taxable gross income in accordance with the provisions of West Virginia Code § 11-23-5a, subject to the deductions from gross income as allowable under the provisions of West Virginia Code § 11-24-6(f)(1)(A) to (f)(1)(D). Such determination of apportionment shall be done in conjunction with consultations with the Collector of Business Taxes who may, upon a showing of need for verification, examine such documents as are necessary to reach a determination of apportionment, in accordance with the provisions and requirements as set forth more fully in West Virginia Code § 11-10-1, et seq.

Sec. 27-43. 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 the gross income of insurance companies which is received for the use of real property, other than property in which such company maintains its office or offices, in this State, whether such income be in the form of rentals or royalties.
- (b) Nonprofit 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, however, that such exemption shall not extend to that part of the 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 Chapter 3 of the City Code.
- (d) Corporations, associations and societies organized and operated exclusively for religious and charitable purposes.
- (e) 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 Article 19-4, as amended.

Sec. 27-44. Assessment Limited to Subjects Authorized by the State.

This article shall not be construed to assess a tax upon any person, business, occupation, service or property upon which State law does not permit the imposition of an annual municipal business and occupation tax.

Sec. 27-45. Use of Gross Income in Computing More than One Tax.

Gross income included in the measure of the tax under Sections 27-33 and 27-34 shall neither be added nor deducted in computing the tax levied under the other sections of this article.

Sec. 27-46. Determining Value of Goods Shipped Out of City Without Sale.

If any person liable for any tax under Sections 27-33 or 27-34 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 such sections. The Collector of Business Taxes shall prescribe equitable and uniform rules for ascertaining such value.

Sec. 27-47. Determining Value of Goods Transferred Between Affiliates.

In determining the value with regards to the sales from one to another of affiliated 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 Collector of Business Taxes 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 the seller but the circumstances and conditions are otherwise similar.

Sec. 27-48. Erroneous Computation.

When it appears to the Collector of Business Taxes that the taxpayer has made a mathematical error or a clerical error, the Collector of Business Taxes shall correct such error and notify the taxpayer, in writing, of the deficiency or overpayment in tax. The procedure for correcting such errors shall be the same as set forth in West Virginia Code § 11-10-6.

Sec. 27-49. Tax Information Exchanged Between City and State to be Confidential; Penalty for Unlawful Disclosure.

(a) The City has entered or will be entering into a reciprocal exchange of tax information agreement with the State pursuant to West Virginia Code § 11-10-5d(i) and (j) and Legislative Regulations, Title 110, Series 26, Section 110-26-16.

(b) All tax information obtained from the State and from the City pursuant to the above agreement shall be confidential. Any tax information obtained by the City from the State shall be used only to the extent necessary in the administration and enforcement of the City tax laws and the State tax laws for the assessment and collection of taxes only.

(c) Any officer, employee or agent of the City or any former officer, employee or agent of the City who divulges facts or information obtained from returns or tax statements other than for the purpose of administering such tax shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both, together with costs of prosecution, in accordance with the same penalties proscribed by West Virginia Code § 11-10-5d(c).

(d) 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 Commission under authority of Section 27-50 shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both, together with costs of prosecution, in accordance with the same penalties proscribed by West Virginia Code § 11-10-5d(c).

(e) For the purposes of this Code, "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 City and shall be using the information only for the purpose of administering business and occupation tax, sales tax from single location businesses or liquor sales tax; or
- (2) The person who filed the return has authorized, in writing, its release, thereby waiving his right to secrecy.
- (3) Those purposes outlined in West Virginia Code § 11-10-5d.

(f) Nothing herein shall be deemed or interpreted to provide for a new or additional private right or cause of action in the event of a violation or violations thereof, other than that which may exist under current law.

Sec. 27-50. Authorization to Enter Into Reciprocal Agreement.

The reciprocal exchange of tax information agreement between the State and the City shall be executed by the proper parties in substantially the form attached to the Ordinance.

Sec. 27-51. Business Enhancement - Tax Credit Definitions.

(a) "New business" means any new commercial wholesale, retail, manufacturing, professional service business, and all other service businesses, excluding banking or financial institutions, public utilities, local cable television company, and business involving residential rental property, which physically locates its principal place of business within the corporate limits of the City, defined in this article, either by purchase or real property or by virtue of a rental agreement or lease and whose gross receipts are subject to the City's business and occupation tax, and is not currently paying such tax.

(b) "Professional service business" includes medical officers, doctors, dentists, lawyers, accountants, engineers, architects, surveyors, real estate, appraisers, etc.

(c) "Annexed businesses" includes existing commercial, wholesale, retail, manufacturing, or service businesses which are brought within the corporate limits of the City by way of annexation by minor boundary adjustment.

(d) "Expanded business" includes existing commercial, wholesale, retail, manufacturing or service businesses, excluding banking or financial institutions, public utilities, local cable television company, and business involving residential rental property, which have their principal place of business physically located within the corporate limits of the City which have been renovated, modernized, enlarged, etc. and those businesses which have been acquired by another person or entity for the purpose of continuing the same business operation while increasing the economic productivity of the business. Expansion of business shall not include business maintenance and repair expenses and exterior building improvements.

(e) "New employee" means a person who is hired and employed in a new business, annexed business or expanded business, who was not previously employed within the corporate limits of the City by such business. A new employee shall be employed at least 40 hours per week.

(f) "New job" means a job which is directly attributable to the qualified investment and is filled by a new employee hired by the business.

(g) "Use." Property is said to be in use when the property is placed in a condition or state of readiness for a specifically assigned function from which new jobs have been created within the City.

(h) "Ward I" means any business which is located in the voting district of the First Ward as designated for the purposes of elections held within the City of Weston. "Ward I" is more specifically defined as follows: Beginning at the point on the Corporation Line where the Court House Magisterial District and Freeman's Creek Magisterial District join and running on the magisterial line to the intersection of Plum Street and Pleasants Street, Northwest on Pleasant Street to the intersection of Second Street; thence in an Easterly direction to Court Avenue, South on Court Avenue sixty (60) feet to an unopened alley, thence East to Bowie Street and the Corporation Line. "Ward I" has also been known as the "Court House District."

(i) "Ward II" means any business which is located in the voting district of the Second Ward as designated for the purposes of elections held within the City of Weston. "Ward II" is more specifically defined as follows: Beginning at the point where West Second Street crosses the West Fork River and proceeding West on West Second Street to Pleasant Street, thence South to Plum Street and there along the magisterial lines of adjoining Court House District and Freeman's Creek District to the Corporate Line; thence, West along the Corporate Limits to the vicinity of Edgewood Drive, North along the Corporate Line to Craig Street, then East along the Corporate Line to the intersection of Peggy Street, then North on Peggy Street to Spring Street, thence Southeast to Summit Street, then along Summit Street to the intersection of View Street, thence South on View Street to the intersection of West Fourth Street, following West Fourth Street to the West Fork River. "Ward II" is also known as the "Freeman's Creek District."

(j) "Ward III" means any business which is located in the voting district of the Third Ward as designated for the purposes of elections held within the City of Weston. "Ward III" is more specifically defined as follows: Beginning at a point where West Fourth Street crosses the West Fork River and following the river Northeast to the intersection of East Sixth Street and Main Avenue, then Northeast to the Corporation Line; following the Corporation Line to beyond Blue Street, thence to the West Fork River and following the West Fork River along the Corporate Line to Butcher's Lane; thence South to a point where the Corporation line intersects Spring Street Extended, thence back along Spring Street, Summit Street and West Fourth Street to the West Fork River. "Ward III" is also known as "Freeman's Creek District and Hackers Creek District."

(k) "Ward IV" means any business which is located in the voting district of the Fourth Ward as designated for the purposes of elections held within the City of Weston. "Ward IV" is more specifically defined as follows: Beginning at the bridge on Second Street over the West Fork River and proceeding along East Second Street to Court Avenue, sixty (60) feet along Court Avenue to an unopened alley and then East to the Corporation Line above Bowie Street, thence following the Corporation Line Northwest to the intersection of East Sixth Street and Main Avenue; thence along the West Fork River South to Second Street. "Ward IV" is also known as the "Hackers Creek District."

Sec. 27-52. Purpose of Granting Tax Credits for New and Expanded Businesses.

The purpose and objectives of Sections 27-51 through 27-58 which involve the granting of tax credits for new and expanded businesses and annexed businesses is to encourage the following types of business developments in the City of Weston: greater retail and service oriented businesses; greater commercial business presence; greater light industrial uses; and greater job creation.

Sec. 27-53. Application Form: Requirements.

Application forms developed by the Collector of Business Taxes must be completed and filed by the business owner in order for the business to be considered for a B&O tax credit. The original application is to be filed with the Collector of Business Taxes with a copy of the application also being filed with the City Council. After the filing of an application form, there shall be a review and investigation of the application of the business by the Collector of Business Taxes. After the investigation, the Collector of Business Taxes shall issue a decision regarding the eligibility of the business for a tax credit and will notify the applicant in writing of its decision. Any written rules, regulations, and forms shall be established by the Collector of Business Taxes and shall be made available to all interested businesses upon their request.

Sec. 27-54. Amount of Credit Allowed.

(a) Any taxpayer who conducts a new business in this City which has gross revenue or gross proceeds of sale in excess of or equal to One Million Dollars (\$1,000,000.00) per year that is subject to the tax imposed by this Article shall be allowed a credit of one hundred percent (100%) of assessed business and occupation tax for a period of three (3) years after the credit is taken.

(b) Any taxpayer who conducts a new business in this City which has gross revenue or gross proceeds of sale in excess of or equal to Five Hundred Thousand Dollars (\$500,000.00) but less than One Million Dollars (\$1,000,000.00) per year that is subject to the tax imposed by this Article shall be allowed a credit of fifty percent (50%) of assessed business and occupation tax for a period of one (1) year after the credit is taken. Such business shall thereafter be allowed a credit of twenty-five percent (25%) of assessed business and occupation tax for a period of the two years following the initial year of credit.

(c) Any taxpayer who conducts a new business in this City which has gross revenue or gross proceeds of sale in excess of or equal to One Hundred Thousand Dollars (\$100,000.00) but less than Five

Hundred Thousand Dollars (\$500,000.00) per year that is subject to the tax imposed by this Article shall be allowed a credit of twenty-five percent (25%) of assessed business and occupation tax for a period of one (1) year after the credit is taken. Such business shall thereafter be allowed a credit of fifteen percent (15%) of assessed business and occupation tax for a period of the two years following the initial year of credit.

(d) Any taxpayer who conducts an expanded business within this City that is subject to the tax imposed by this Article shall be allowed a credit of fifty percent (50%) for a period of one (1) year after the credit is taken. Such business must prove through sufficient documentation that the expansion has been undertaken at a level of, at minimum, a ten percent (10%) increase.

(e) The amount of tax credit allowable begins with the taxable year in which the taxpayer places the qualified investment into use within this City and continues thereafter for a one to three-year period unless the taxpayer elects to delay the beginning of the one to three-year period to the next succeeding taxable year. Such delay shall only be allowable at the start of the tax credit period.

(f) The administration of the tax credit is vested in, and shall be exercised by the Collector of Business Taxes who, in connection therewith, shall prescribe all necessary forms. The Collector of Business Taxes may prescribe all necessary rules and regulations that are in conformity with Sections 27-51 through 27-58 for the making of returns and for the ascertainment, assessment and collection of all the taxes imposed hereunder. The Collector of Business Taxes shall cause examples of different hypothetical situations resulting from an application of the Sections 27-51 through 27-58 to be prepared and filed with the City Clerk and the Council, in order that correct interpretations regarding applicability may be made to the public. The Collector of Business Taxes may also prescribe such rules and regulations as may be necessary to enable verification of the taxpayer's continued entitlement to claim such credit and to verify proper good faith application of the credit allowed. Such regulations may include but not be limited to the requirement that taxpayers receiving any tax credit file a quarterly business and occupation tax return.

(g) Special Tax Credit - Reopening of Business Damaged by Fire, Flood, etc. If any existing business located within the Corporate Limits of the City of Weston is damaged by fire, flood, etc., and the dollar amount of the damage to the business is greater than fifty percent (50%) of the fair market value of the real and personal property of the business, such business will be entitled to receive a "special" tax credit, if the business is completely remodeled and reopened and all jobs existing at the time of the damage occurred are retained. The amount of the tax credit will be fifty percent (50%) of the business and occupation taxes owed in the first year after the business is reopened.

Sec. 27-55. Administration of Tax Credit Program.

The administration of the tax credit program shall be vested in the Collector of Business Taxes, who may: conduct an annual audit on participating businesses to determine continued eligibility for participation in the program; require participating businesses to provide financial documentation for participation in the program; and review the amount of credit given to each participating business annually.

All businesses approved for a tax credit hereunder must still file a quarterly B&O tax return and report gross income to the City.

The amount tax credit allowable begins with the taxable year in which the taxpayer places the qualified investment into use within this City and continues thereafter.

No application for a tax credit will be considered and no credit will be otherwise granted to any existing business who, at the time of the application is made, is delinquent in the payment of City business and occupation taxes.

Once a business is granted tax credit under this article, the business would not be allowed another tax credit for at least five years from the date the initial credit was granted.

Sec. 27-56. Reopened Businesses.

If a business which is receiving any type of tax credit discontinues operations, and if such business reopens, to again be eligible for any type of new tax credit hereunder, the business must have been closed for at least a two-year period, unless the business is opened by a new individual owner, new partners, or a new corporation with new corporate officers.

Sec. 27-57. Qualified Investment.

(a) For the purposes of determining the amount of any tax credit permitted hereunder, the qualified investment in property purchased or leased for business growth shall be equal to the cost expended for each of the following after being placed in service and use within the City of Weston.

"Qualified Investment" will include:

- (1) Real property and improvements thereto, having a useful life of twenty or more years under depreciation rules of the Internal Revenue Service;
- (2) Real property or improvements thereto or tangible personal property acquired by a written lease for a period of five or more years;
- (3) Depreciated or amortizable tangible personal property having a useful life of five or more years under the depreciation rules and regulations of the Internal Revenue Service;
- (4) Natural resources in place which are capable of sustained production for a period of ten or more years may also be included in the computation of a qualified investment.

(b) The qualified investment may not include any of the following:

- (1) Repair costs unless capitalized for federal income tax purposes;
- (2) Vehicles and equipment purchased prior to the granting of any tax credit for use in the business;
- (3) Wages and/or benefits paid to any new or existing employees.

(c) In determining the amount of the qualified investment for purchased property, the value of any property given in trade or exchange for the property purchased may not be included.

(d) In determining the amount of the qualified investment where property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

(e) The final determination as to what costs will count toward the qualified investment as defined in this section is vested in the Collector of Business Taxes.

Sec. 27-58. Reduction in the Number of Employees.

If during the taxable year in which a tax credit is being taken the average number of employees required to continue the credit is reduced, the tax credit created herein shall be forfeited for that year and for each eligible year thereafter where the number of employees remains below the number of jobs originally required as a condition of the tax credit.

If the reduction in the number of employees was due to circumstances which the taxpayer believes to have been out of his control, the taxpayer may petition the Collector of Business Taxes for a hearing to examine the reasons why such tax credit shall not be forfeited.

Sec. 27-59. Taxpayer's Responsibility to Keep Records of Investment Credit.

It is the taxpayer's responsibility to keep adequate records to establish the following facts for each item of qualified property:

- (1) Its identity.
- (2) Its actual or reasonably determined costs.
- (3) The month and year of operation the business began, or the date that expansion of the business was completed.
- (4) The date on which the business elected to begin taking the allowable tax credit.
- (5) The amount of tax credit taken.
- (6) The employment levels including gross payroll for the taxable quarter in which credit is being taken.

Sec. 27-60. Appeals from Tax Credit Decisions.

An applicant for a tax credit who feels aggrieved by the decision of the Collector of Business Taxes with respect to the applicant's application for a tax credit may appeal the decision to the City Council. Such appeal must be filed within thirty (30) days of the date of the decision by the Collector of Business Taxes. Such appeal shall be in writing and signed by the applicant-taxpayer. In the case of a corporation, the president or vice-president shall sign. All signatures shall be sworn to under oath. The appeal shall state specifically the grounds for a reversal of such decision of the Collector of Business Taxes. The City Council shall issue an appeal decision within thirty days of receipt of the appeal. The decision of the City Council shall be final as to the City's decision. After such hearing, a taxpayer may appeal the decision of the City Council to a circuit court of competent jurisdiction.

Sec. 27-61. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

Sec. 27-62. Reference to West Virginia Code Sections: Effective Date.

(a) In all places in the referenced West Virginia Code Sections, "Collector of Business Taxes" shall replace "Tax Commissioner" and "City" shall replace "State."

(b) This article shall be enacted upon passage after a public hearing required thereon. The effective and operative date of the article shall be the first day of the fiscal year, in accordance with West Virginia Code § 8-13-5.

Passed First Reading:

November 18, 1998

Passed Second Reading:

December 2, 1998

Passed Third Reading:

December 18, 1998

Ordinance Effective:

April 1, 1998
Revised December 18, 1998

INJUNCTIVE RELIEF; ADDITIONAL REMEDY.

In addition to all other remedies provided for in this article, the City Attorney, of his/her own volition, or at the instance of any citizen, resident or taxpayer of the City, may apply to the Circuit Court, or the Judge thereof in vacation, for an injunction to restrain, prevent or abate the maintenance and storage of abandoned motor vehicles, junked motor vehicles, old vehicle tires or inoperative or abandoned household appliances, in violation of any provision of this article.

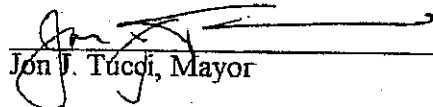
PENALTY.

In addition to all other provisions set forth in this Code section, whoever violates any provision of this Code section shall be fined up to Five Hundred Dollars (\$500.00).

This amendment shall be effective immediately upon passage.

Passed by the Council of The City of Weston on FIRST READING on this 7th day of July, 2003.

Passed by the Council of The City of Weston on SECOND READING on this 4th day of August, 2003.




Jon J. Tucci, Mayor

ATTEST:

Rebecca Swisher, City Clerk

PREPARED BY:


Gale E. Carroll, Attorney at Law
Legal Counsel for The City of Weston
