

ARTICLE 761
Public Utility Service Tax

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CROSS REFERENCES

Public utilities tax - see W.Va. Code 8-13-5a

Business and occupation tax on utilities - see BUS. & TAX. 745.33

761.01 DEFINITIONS.

The following words and phrases when used in this article shall for the purposes of this article have the following respective meanings:

- (a) "Person" means individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character;

 - (b) "Public utility service" means all services and tangible personal property purchased within the City from a seller, as hereinafter in this section defined, namely telephone service; electric service; gas service; including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia; water service and sanitary sewer service; waste collection; taxi or limousine service; if purchased, used or consumed within the corporate limits of the City;

 - (c) "Purchaser" means every person who purchases, uses or consumes a public utility service;

 - (d) "Seller" means every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies a public utility service; and

 - (e) "User" means the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.
- (Passed 5-11-71)

761.02 IMPOSITION AND LEVYING OF TAX.

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of the City, such public utility service. Such tax shall be in the amount of two percent (2%) of the charge (exclusive of any Federal or State tax thereon imposed upon the purchaser) made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this article is in addition to all other taxes imposed and levied by this Municipality. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars (\$20,000) in any given calendar month, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of the amount of twenty thousand dollars (\$20,000). In the event more than one public utility shall furnish the identical public utility service to the same purchaser, the purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service. (Passed 5-11-71.)

761.03 COLLECTION; TIME OF PAYMENT; ACCOUNTING.

It shall be the duty of every seller in acting as the tax collecting medium or agency for the City to collect from each purchaser for the use of this Municipality the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to the Treasurer and each seller shall remit the amount of tax shown by the report to have been collected to the Treasurer on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied by this article shall apply to periodic statements rendered after August 1, 1971, for public utility service rendered subsequent to August 1, 1971, and when any such periodic statement covers public utility service rendered both before and after such date, only that portion of the charge for public utility service rendered after such date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after June 30, 1971, within the period covered by such periodic statement, bears to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the Treasurer.

(Passed 5-11-71.)

761.04 RECORDS; INSPECTION THEREOF.

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of the City, which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefore, and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of this Municipality at reasonable times, and the duly authorized agents of this Municipality shall have the right, power and authority to make at the expense of this Municipality such transcripts thereof during such times as they may desire.

(Passed 5-11-71.)

761.05 EXEMPTIONS.

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

- (a) Purchases of public utility service for resale;
- (b) Purchases of public utility service by the United State of America, the State, and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof;
- (c) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied;
- (d) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges or tolls for telephone calls to points outside the corporate limits of this Municipality; and
- (e) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

(Passed 5-11-71.)

761.06 RULES AND REGULATIONS.

(a) There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser, on the ground that the public utility service was not purchased, used or consumed within the corporate limits of the City, the seller shall refer the question to the Treasurer, and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by the Treasurer. All claims for refunds of any such tax shall be presented to this Municipality and not to the seller.

(b) The Treasurer shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.

(Passed 5-11-71)

761.07 ENFORCEMENT.

Any amount of tax due and unpaid under this article shall be a debt due this Municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in West Virginia Code 8-13-5, as amended, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

(Passed 5-11-71.)

761.99 PENALTY.

Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00). The failure or refusal to pay the tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense.

(Passed 5-11-71)