

Council

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Ordinance - 4-201 through 4-214 BUSINESS AND OCCUPATION TAXES

4-201. Authority to levy business and occupation or privilege tax.

Whenever any business or occupation, upon which the State of West Virginia imposes an annual business and occupation or privilege tax under the provisions of the state code, is engaged in or carried on within the corporate limits of the town, the council shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation or privilege tax thereon for the use of the town: provided, that in no case shall the rate of such town business and occupation or privilege tax on a particular activity exceed the rate imposed by the state, exclusive of surtaxes, and the ordinance imposing such tax shall conform with the provisions of said state code as to the waiver of penalties.

Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year and each year thereafter.

(See West Virginia Code §8-13-5)

4-202. Confidential nature of returns; limitation on divulging information.

All returns and tax statements made by taxpayers to town officers shall be regarded as confidential and, except in compliance with judicial order or as may be required by the proper administration hereof, the Town Recorder, his agents and employees, and former Town Recorders, agents and employees, shall not divulge facts or information obtained in the administration of this code.

4-203. Tax imposed on public service or utility business.

Upon, any person engaging or continuing within the town in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor 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 respective rates as follows:

- (1) water companies, four per cent, except as to income from municipally owned water plants;
- (2) electric light and power companies, four per cent on sales and demand charges for domestic purposes and commercial lighting, and three per cent on sales and demand charges for all other purposes, except as to income from municipally owned plants producing or purchasing electricity and distributing the same;

(3) natural gas companies, three per cent on the gross income for this purpose to be determined by deducting from gross income from all sales to consumers the amount of the tax paid by the taxpayers under Section 2Ar Chapter 13, Article 11 of the West Virginia State Code;

(4) and upon all other public service or utility business, two percent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this town and other localities. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed by the appropriate section or sections of this article. (See West Virginia Code 58-13-5a)

4-204. Exemptions.

There shall be an exemption in every case of fifty dollars annually in the amount of tax computed under the provisions of this article. A person exercising a privilege or occupation taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion of fifty dollars that the period of time the privilege or occupation is exercised bears to a whole year.

Only one exemption shall be allowed to any one person, whether he exercised one or more privileges or occupations taxed hereunder.

4-205. Computation of tax; remittance.

The taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail it together with a remittance of the amount of tax to the Recorder of the Town of Sutton. In estimating the amount of tax due for each quarter the taxpayer may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid or with the consent in writing of the Town Recorder, annually at the end of the month next following the close of the tax year.

4-206. Return and remittance by taxpayer.

On or before the expiration of one month after the end of the tax year each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade, or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this article and deduct the amount of quarterly payments as herein provided, if any, and transmit with his report a remittance of the residue of the tax chargeable against him to the office of the Town Recorder; such return shall be signed by the taxpayer, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust, or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The Town Recorder, for good cause shown may extend the time for making the annual return on the application of any taxpayer and

grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

4-207. Erroneous computation.

If the taxpayer shall make any error in computing the tax assessable against him, the town recorder 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 may be liable shall be paid within ten days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the Town Recorder and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

4-208. Failures to make return; assessment by Town Recorder when return believed deficient.

If any person shall fail or refuse to make a return, either in whole or in part or if the Town Recorder has reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, he may proceed as he deems best to obtain information on which to base the assessment of the tax. The Town Recorder may, with the consent of the council, request of the state Tax Commissioner of West Virginia permission to inspect and make copies of the State Gross Sales Tax Returns filed in the Commissioner's Office by any taxpayer of the town for the purpose of securing information for municipal tax purposes and it is further provided that the necessary funds to pay reasonable costs and expenses to obtain the information required shall be paid by the town. As soon as possible after procuring such information as the Town Recorder may be able to obtain as to any person failing or refusing to make a return, he 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 Town Recorder shall be final as to any person who refused to make a return.

4-209. Jeopardy assessments.

If the Town Recorder believes that the collection of any tax which he is required to administer will be jeopardized by delay, he shall there upon make an assessment of the tax, noting that fact upon the assessment. The amount assessed shall be immediately due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such an assessment becomes final.

A petitioner for reassessment by a person against whom a jeopardy assessment has been made must be accompanied by such security as the Town Recorder may deem necessary to ensure compliance with this article.

4-210. Notice of assessment; petition for reassessment; hearing.

The Town Recorder shall, where the taxpayer has not been previously so notified, give to the taxpayer written notice of any assessment made pursuant to this article. Unless taxpayer against whom a notice of assessment is directed shall, within thirty days after receipt thereof (except in the case of jeopardy

assessments), either personally or by certified mail, file with the Town Recorder petition in writing, verified under oath by said taxpayer or his duly appointed agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessments objected to, together with the reason for such objections, such assessment shall become and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above described is filed, the council shall assign a time and place for the hearing thereof and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the town council for good cause. The hearing shall be informal and may be conducted by an examiner designated by the council. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the council shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the council's decision shall be final.

4-211. Appeal; correction of assessment; injunction.

If any person, having made the return and paid the tax as provided by this article, feels aggrieved by the assessment so made upon him for any year by the Town Recorder, he may apply to the town council¹ by petition, in writing, within thirty days after notice is mailed to him by the Town Recorder, for a hearing and correction of the amount of the tax so assessed upon him by the Town Recorder, in which petition shall be set forth the reasons why such hearing should be granted and the amount of such tax should be reduced. The town council shall promptly consider such petition, and may grant such hearing or deny it. If denied, the petitioner shall be forthwith notified thereof; if granted, the council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the council may make such order in the matter as may appear to it just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax required to be paid by him may recover the amount so paid, together with interest, in any proper action or suit against the town as may be authorized by law.

4-212. Tax year.

The assessment of taxes herein made and the returns required therefor shall be for the year ending on the thirty-first day of December. If the taxpayer, in exercising a privilege or occupation taxed under this article, keeps the books reflecting the same on a basis other than the calendar year, he may, with the consent of the Town Recorder, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method used to pay the like tax to the State of West Virginia.

4-213. Tax cumulative.

The tax imposed by this article shall be in addition together licenses and taxes levied by this code and other ordinances 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 a condition precedent to exercising the privilege taxed, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article.

4-214. Payment; penalty for nonpayment. Every remittance of taxes imposed by this article shall be made by bank draft, certified check, money order, or certificate of deposit to the Town Recorder, who shall issue his receipt therefor to the taxpayer and pay the money into the town treasury to be kept and accounted for as provided by law.

If any taxpayer fails to make the return required by this article 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 of the tax for the first month or fraction thereof of delinquency and one percent of the tax for each succeeding month or fraction thereof of delinquency; provided, that if such failure is due to reasonable cause, the Town Recorder or the council may waive or remit in whole or in part these penalties.

If the failure to pay is due to fraud or intent to evade this article and the rules and regulations promulgated thereunder, there shall be added an additional penalty of twenty-five percent of the amount of the tax exclusive of penalties.

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

Amended Ordinance - 4-201 through 4-214 BUSINESS AND OCCUPATION TAXES

TOWN OF SUTTON, WEST VIRGINIA

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2 Section 201 through 214 OF THE CODE OF THE TOWN OF SUTTON

WHEREAS, the Town Council of the Town of Sutton, West Virginia, is authorized under West Virginia Code §§ 8-11-3, 8-11-4, and 8-12-5, and other applicable provisions of state law, to adopt, amend, repeal, and reenact ordinances governing municipal affairs; and

WHEREAS, the Town Council finds that the existing provisions of Chapter 4, Article 2, Section 201 through 214 contain outdated, unclear, or fragmented language that no longer reflects current Town policy or best practices; and

WHEREAS, the Town Council finds it in the best interest of the Town and its residents to repeal the existing provisions and adopt a consolidated, modernized replacement that is clear, enforceable, and consistent with current West Virginia law;

Amending and establishing 4-201 through 4-214 of the Town Code relating to the imposition and collection of municipal Business and Occupation Tax pursuant to West Virginia law.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SUTTON:

That Article 4 of the Town Code be amended to establish a Business and Occupation Tax measured by gross receipts for businesses operating within the corporate limits of the Town, effective July 1, 2026..

The tax shall be administered and collected in accordance with the provisions set forth in this ordinance.

Section 1. Repeal

Chapter 4, Article 2, Section 201 through 214 of the Code of the Town of Sutton, as previously enacted and amended, is hereby repealed in its entirety.

Section 2. Reenactment and Replacement

Chapter 4, Article 2, Section 201 through 214 of the Code of the Town of Sutton s hereby reenacted in its entirety to read as follows:

Business and Occupation Tax

4-201. Authority to Levy Business and Occupation Tax

Authorization

Pursuant to the authority granted to municipalities under West Virginia Code §8-13-5, the Town of Sutton is authorized to levy and collect a Business and Occupation (B&O) Tax upon persons, firms, partnerships, corporations, and other entities engaging in business activities within the corporate limits of the Town.

Beginning July 1, 2026, all businesses operating within the corporate boundaries of the Town of Sutton shall be subject to the Town's Business and Occupation Tax as established by this ordinance.

The tax shall be measured by the gross receipts or gross income of the business derived from activities conducted within the Town.

The rate of any municipal Business and Occupation Tax shall not exceed the maximum rate permitted under state law.

4-202. Definitions

For the purposes of this article, the following terms shall have the meanings indicated:

Business- Any activity engaged in with the object of gain, benefit, or advantage, either direct or indirect, including trade, commerce, manufacturing, services, or other commercial activity conducted within the corporate limits of the Town.

Gross Income / Gross Receipts-The total receipts derived from trade, business, commerce, sales, or services conducted within the Town, without deduction for labor costs, taxes, royalties, interest, discounts, expenses, or amounts paid to employees or independent contractors.

Property-Real property and improvements thereto purchased or leased for use as part of a business operation located within the Town.

Business and Occupation Tax Liability-The amount of tax owed by a taxpayer calculated by applying the applicable tax rate to the taxpayer's gross receipts generated within the Town during the reporting period.

4-203. Filing and Payment of Tax

All taxpayers subject to this article shall file Business and Occupation Tax returns quarterly for the following reporting periods:

- Quarter 1 — July 1 through September 30
- Quarter 2 — October 1 through December 31
- Quarter 3 — January 1 through March 31
- Quarter 4 — April 1 through June 30

Tax returns shall be filed and paid within thirty (30) days following the end of each reporting period.

The Town may require returns to be filed on forms prescribed by the Recorder.

4-204. Business and Occupation Tax Rates

There is hereby levied and imposed upon persons engaging in business activities within the corporate limits of the Town of Sutton a Business and Occupation Tax measured by the gross receipts derived from such activities, according to the following classifications and rates.

The tax shall be computed per one hundred dollars (\$100) of gross receipts, unless otherwise specified.

Business Classification	Rate Per \$100.00
Manufacturing, compounding, or preparing products for sale	\$0.30
Wholesale sales (including distribution)	\$0.10
Retail sales of tangible personal property	\$0.50
Contractors and construction services	\$0.30
Amusements and entertainment businesses	\$0.50
Service (including professional services) And all other businesses	\$1.00
Public utilities (as permitted by law)	\$0.50

Rental or Leasing of real or personal property	\$1.00
Liquor - Retail Sale (Class B/Outlet)	\$1.25
Liquor - Service & Other Business (Class A/On-Premises)	\$1.50

If a business engages in more than one classification, the tax shall be computed separately for each activity.

The Town Council may amend the tax rates or classifications by ordinance, provided such rates do not exceed those permitted under West Virginia law.

4-205. Penalties and Late Payment

Any tax not paid by the due date shall be subject to the following penalties:

- Five percent (5%) penalty after the first thirty (30) days past due
- One percent (1%) additional penalty per month or fraction thereof until paid

The Town may pursue collection of unpaid taxes in accordance with applicable municipal and state law.

4-206. New Business Tax Credit

To encourage economic development and business investment within the Town of Sutton, a New Business Tax Credit is hereby established.

(a) Definition of New Business

For purposes of this section, a new business shall mean:

1. A commercial, wholesale, retail, manufacturing, or service business establishing its primary place of operation within the corporate limits of the Town; or
2. A business relocating its principal place of operation from outside the Town into the corporate limits through purchase or lease of real property.

A qualifying lease shall generally be five (5) years or longer, although leases of six (6) months or longer with an option to extend may be considered upon review by the Town Council.

Businesses incorporated into the Town through annexation or boundary adjustments may also qualify as new businesses.

A business shall not qualify as a new business if:

- it previously operated within the Town and merely changes its name or organizational structure; or
- an existing business is sold or transferred but continues substantially the same operations.

(b) Amount of Credit

Qualified new businesses may receive the following Business and Occupation Tax credits:

- Year 1 — 75% credit of the tax liability
- Year 2 — 50% credit of the tax liability
- Year 3 — 25% credit of the tax liability

The total tax credit granted to any qualifying business shall not exceed \$300,000.

(c) Eligibility Requirements

To claim the credit:

- the business must file all required B&O tax returns on time
- all required documentation must be submitted to the Town

Failure to file a required return by the due date may result in denial of the credit for the applicable period.

4-207. Administration and Enforcement

The Recorder of the Town of Sutton shall administer this article and shall:

- prepare and distribute required forms
- maintain records of filings and payments
- collect and account for all taxes imposed under this article

The Town Council may adopt rules and procedures necessary to administer this ordinance.

The Council shall have authority to determine eligibility for tax credits and resolve disputes concerning qualification under this article.

4-208. Audit Authority and Examination of Records

In order to verify the accuracy of any Business and Occupation Tax return filed under this article, the Town of Sutton shall have the authority to examine the records of any taxpayer subject to this tax.

The Recorder, or any authorized representative of the Town, may:

1. Examine the books, papers, records, invoices, and other documents of any taxpayer that relate to the gross receipts or business activities conducted within the corporate limits of the Town;
2. Require the taxpayer to provide information necessary to determine the correct amount of tax due;
3. Conduct an audit of any taxpayer when the Town has reason to believe a return may be incomplete, inaccurate, or not filed as required

Such examinations may include records related to sales, services, contracts, or other transactions that generate gross receipts subject to the Business and Occupation Tax.

All taxpayers subject to this article shall maintain adequate records for a minimum period of three (3) years and shall make such records available to the Town upon reasonable notice.

If an audit determines that additional taxes are due, the Town shall notify the taxpayer in writing of the amount due, including any applicable penalties and interest.

4-209. Appeals and Administrative Review

Any taxpayer who disagrees with a determination made by the Town regarding the assessment of a Business and Occupation Tax, penalty, denial of credit, or other decision made under this article may file a written appeal.

(a) Filing an Appeal

The taxpayer shall submit a written appeal to the Recorder of the Town of Sutton within thirty (30) days from the date of the written notice of the determination being appealed.

The appeal shall include:

- the name and address of the taxpayer
- the tax period in dispute
- a statement of the reason for the appeal
- any supporting documentation.

(b) Review by Council

Upon receipt of the appeal, the matter shall be placed on the agenda of the next available Town Council meeting or a meeting scheduled for that purpose.

The Town Council shall review the matter and may:

- uphold the original determination
- modify the assessment
- grant relief where appropriate under this article.

The taxpayer may present information or documentation supporting the appeal.

(c) Final Administrative Decision

The decision of the Town Council shall constitute the final administrative determination of the Town.

Nothing in this section shall prevent a taxpayer from seeking further review in a court of competent jurisdiction as provided by law.

4-210. Business Registration Requirement

Every person, firm, partnership, corporation, or other entity engaging in business within the corporate limits of the Town of Sutton shall register with the Town prior to commencing business operations.

The registration shall be filed with the Town Recorder on forms prescribed by the Town and shall include:

- the name and address of the business;
- the name of the owner or responsible officer;
- the location of the business within the Town;
- the nature of the business activity conducted.

Registration shall be required annually, unless otherwise provided by the Town.

Registration does not relieve any person from the obligation to file and pay the Business and Occupation Tax imposed by this article.

Failure to register may result in the assessment of penalties and enforcement actions as authorized by this ordinance.

4-211. Allocation of Gross Receipts

When a business conducts activities both **within and outside the corporate limits of the Town**, only the portion of gross receipts attributable to business conducted within the Town shall be subject to the Business and Occupation Tax.

The taxpayer shall maintain records sufficient to demonstrate the allocation of receipts between locations.

If adequate records are not provided, the Town may reasonably estimate the portion of gross receipts attributable to business conducted within the Town based upon available information.

4-212. Failure to File Return

If a person required to file a Business and Occupation Tax return fails to do so within the required time period, the Town may estimate the tax due based on:

- prior tax returns filed by the taxpayer;
- records available to the Town;
- information obtained through audit; or
- other reasonable methods of determining gross receipts.

The estimated tax shall become due and payable unless the taxpayer files a proper return and provides documentation demonstrating the correct amount due.

4-213. Confidentiality of Tax Information

Except as otherwise provided by law, all tax returns, reports, financial information, and supporting documents submitted to the Town of Sutton pursuant to this article shall be confidential and shall not be disclosed to any person other than authorized municipal officials responsible for administering or enforcing the provisions of this article.

No officer, employee, or agent of the Town shall disclose any information contained in a tax return or obtained through an audit or investigation conducted under this article, except:

1. When required for the proper administration or enforcement of this article;
2. When required by lawful court order or legal process;
3. When the information is provided in a form that does not identify any particular taxpayer; or
4. When disclosure is otherwise required by applicable law.

Nothing in this section shall prevent the Town from publishing or releasing aggregate statistical information concerning Business and Occupation Tax collections, provided that such information does not reveal the identity or financial information of any individual taxpayer

Any unauthorized disclosure of confidential tax information by a municipal officer or employee may result in disciplinary action and any other remedies permitted by law.

2-214 Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

Section 4. Repealer

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

Section 5. Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

Section 6. Effective Date

This ordinance shall take effect upon adoption, following required readings, approval, and publication as provided by law.