BUSINESS AND TAXATION CODE

CODIFIED ORDINANCES OF THE TOWN OF DANVILLE

PART EIGHT/CHAPTER THREE – BUSINESS OCCUPATION TAX

**Chapter 3- Business and Occupation Taxes**

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**8-301 DEFINITIONS**

For the purposes of this article, the following words and phrases are defined as follows:

1. Banking Business or Financial Organization means any bank, banking association, trust company, industrial loan company, small loan company or licensee, building or loan association, savings and loan association, finance company, investment company, investment broker or dealer or 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 consist of dividends, interest and other charges derived from the use of money or credit.
2. Business means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. The term 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. The term business includes 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.
3. Collector means the Town Treasurer or person/persons designated by the Town Treasurer to collect.
4. Contracting means the furnishing of work or both materials and work in the fulfillment of a contract for the construction, alteration, repair, demolition, 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.
5. Contractor means any person who furnishes work, or both materials and work in the fulfillment of a contract for the construction, alteration, repair, demolition, decoration or improvement of a new or existing building or structure, or any part thereof. The term contracting also includes the alteration, improvement or development of real property.
6. Gross Income means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property, real or personal, or service or both, 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 similar 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 expenses.
7. Gross Proceeds of Sales means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.
8. Exceptions to the term Gross Income and Gross Proceeds of Sales 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 in cash or by credit
	3. The amount allowed as “trade-in value” for any article accepted as part payment for nay article sold
	4. Excise taxes imposed by the State
	5. Money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another
9. New Business means a business that:
	1. Has not operated or had a manufacturing facility, retail store or other business operation within the boundaries of the Town during the previous twelve (12) month period; or
	2. Reopens or continues a manufacturing facility, retail store or other business operation following a change in the ownership of the business such that neither the prior owner or owners, nor their immediate families or spouses of immediate family members do not continue to have an ownership interest in the ongoing business in excess of 10% of such business; or
	3. Opens a new manufacturing facility, store or other business operation that is in addition to any existing business operation or activity owned by the same persons or entities, but only so long as the prior business activities continues its operations or activities in the same manner as immediately prior to the opening of a new facility, store or other business operation.
10. Nonresident contractor means a contractor, as previously defined, who does not maintain a business location within Boone County, West Virginia
11. Person or Company means any individual, firm partnership, joint adventure, 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.
12. Sale, Sales, or Selling means any transfer of the ownership of or title property, whether for money or in exchange for other property
13. 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; and
	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; and
	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.
14. Selling at Retail means all other sales other than wholesale sales are deemed to be retail sales.
15. Service, business or calling means all activities engaged in by a person for other persons for a consideration, which involved the rendering of a service, including the rendering of professional service, as distinguished from the sale of tangible property; but shall not include the services rendered by an employee to his employer. This term includes but is not 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; The dressing and processing of food intended for human consumption by a person, or the cooking and serving of food by a restaurant which food is to be sold in the town by such person, shall not be considered manufacturing or compounding or preparing for sale, but the sale of these products shall be reported under services and all other business. and
	2. Persons engaged as independent contractors in producing natural resource products which are owned by another or others, as personal property, immediately after such products are severed, extracted, reduced to possession and produced; and
	3. The repetitive carrying of accounts, in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or service, except as to persons taxed pursuant to the provision of Section 737.14
16. Taxpayer means any person liable for any tax under this article
17. Tax Year or Taxable Year means either the calendar year or the taxpayer’s fiscal year when permission is obtained from the Town Treasurer to use such fiscal year as the tax period in lieu of the calendar year.

**8-302 RETURN AND REMITTANCE BY TAXPAYER**

On or before thirty (30) days after the end of the fiscal tax year, each person liable for the payment of a tax under section 8-301 shall make a return showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against the business in accordance with the provisions of this article and deduct the amounts of quarterly payments (as hereinbefore provided), if any and transmit with the report required by Section 8-301 covering the residue of the tax chargeable against him to the office of the treasurer, such return shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the president, vice-president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, co-partnership, joint venture, association, trust or any other group or combination actings as a unit shall make the oath on behalf of the taxpayer. If for any reason it is not practicable for the individual taxpayer to take the oath, the same may be made by any duly authorized agent. The supervisor, for any 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.

**8-303 ERRONEOUS COMPUTATION**

1. If the taxpayer shall make an error in computing the tax assessable against him the supervisor shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to the Town promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable. These additional taxes shall be paid within ten days after receipt of such statement.
2. 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 treasurer and shall be payable out of any funds available for this purpose by the City Clerk and Mayor. The taxpayer may, at their election, apply an overpayment credit to taxes subsequently accruing hereunder.
3. To further validate the gross income by the business, a Schedule C from a yearly tax return will need to be presented from businesses that file Business and Occupation Tax through the town yearly.

**8-304 FAILURE TO MAKE A RETURN: ASSESSMENT BY TREASURER**

If any person fails or refuses to make a return, either in whole or in part, or if the part treasurer has reasonable grounds to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, he/she may proceed as he/she deems best to obtain information on which to base the assessment of the tax. The treasurer may him/himself or his duly appointed agent, make examination of the books, records or papers and audit the accounts of any such person, and may take evidence, administered by him/herself or his/her agent, on oath, of any person who he/she may believe shall be 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 failing or refusing to make a return, the treasurer shall proceed to assess the tax and shall notify the person assess of the amount of the tax. The assessment of the tax by the treasurer shall be final as to any person who fails or refuses to make a return.

**8-305 REVOCATION OF LICENSES AND PERMITS**

(a) The town collector has the authority to revoke any and all licenses and permits issued by the town in the event a licensee/permittee fails to file any town tax return or fails to pay any delinquent taxes, fees or any interest or penalty thereon due and owing to the town. The town collector has the authority to deny and prevent any and all licenses and permit privileges to those persons who are delinquent in paying taxes, fees or any interest or penalty thereon due and owing the town.

(b) The town will attempt to communicate with the business owner listed on the license application by phone, email, or letter (using information given on license application) at increments of 30, 60 and 90 days. After the final attempt at 90 days, the town collector will begin the process of revocation.

(c) In the event of revocation, the town collector will provide written notice to the licensee/permittee at least five days prior to the contemplated revocation and such notice shall be served by certified mail. The notice shall indicate the time and the place of the revocation review meeting, the general grounds of said contemplated revocation, and shall advise the licensee/permittee of his/her rights to appear at said hearing in person and represented by legal counsel, and to be heard orally upon the merits of his/her defense. The town collector may request legal advice from the town attorney's office and adopt such procedures for its decorum and the dispatch of business at such hearings as he/she may regard advisable. The revocation decision of the town council will be final; provided, that those licensees/permittees who are subject to administrative or judicial appeals, may utilize these procedures in accordance with the Code, but will not be grounds to delay the revocation process.

(d) Each license or permit that has been revoked pursuant to this section may be re-issued upon payment of all delinquent B&O taxes, fees or any interest or penalty thereon due and owing to the town.

**8-306 APPEAL FROM ASSESSMENT**

If any person having made a return and paid the tax as provided by this article, feels aggrieved by the assessment so made upon him/her for any years by the treasurer, he/she may apply to the council by petition, in writing, within thirty days after notice is mailed to him/her by the treasurer, for a hearing and correction of the amount of the tax so assessed upon him/her by the treasurer, in which petition shall be set forth the reason why such hearing should be granted and the amount of such tax should be reduced. Council shall promptly consider such petition and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted council shall notify the petitioner of the time and place fixed for such hearing. After such hearing 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 and required to pay the same may recover the amount paid, together with interest, in any proper action or suit against the Town as may be authorized by law.

**8-307 TAX YEAR**

The assessment of taxes herein made and the returns required therefore shall be for the calendar year ended December 31; if the taxpayer, in exercising a privilege taxable under the article, keeps the books reflecting the same on a basis other than such year, he may, with the assent of the treasurer, make his annual returns, and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

**8-308 TAX CUMULATIVE**

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

**8-309 TAX A DEBT; LIEN OF UNPAID TAX; PRIORITY OF LIEN; PENTALTY FOR NONPAYEMENT**

1. A tax due and unpaid under this article shall be a debt due the Town. It shall be a personal obligation of the taxpayer and if unpaid a lien shall be placed upon the property used in the business or occupation upon which such tax is imposed, this lien shall have priority over all liens and obligations, except those due the State of West Virginia and the United States of America.
2. A penalty of five percent (5%) of the tax shall be added for any default for thirty days or less and for each succeeding thirty days elapsing before payment, there shall be an additional penalty of one percent (1%) all of which penalty shall be secured by the lien herein provided. (Interest Rate based on CPI)
3. The less exemption discount given of six dollars and twenty five cents ($6.25) per quarter or twenty five dollars ($25.00) per year is only applicable if the business pays its taxes within 30 days after the end of the quarter or 90 days after the end of the calendar year. Once the penalty is added for late payment, the less exemption discount is not applicable.

**8-310 AUTHORITY TO MAKE COLLECTION; INJUNCTION; PAYMENT BY RECEIVER**

1. The treasurer may, by him/herself, or by duly appointed agents as mentioned in Section 8-314, collect taxes due and unpaid under this article, together with all accrued penalties. After delinquency shall have continued sixty days, the treasurer may proceed when authorized by the council in the circuit court of the county, to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties due under this article. In any proceeding under this section upon judgment or decree for the plaintiff he/she shall be awarded his/her cost.
2. In the event a business subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of such taxes as the same become due.

**8-311 PAYMENT WHEN PERSON SELLS OUT OR QUITS BUSINESS**

The tax imposed by this article shall be a lien upon the property of any person subject to the provision hereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make the return provided for under Section 8-302 within thirty (30) days after the date he/she sold out his/her business or stock of goods, or quit said business, and his successor in business shall be 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 shall produce a receipt from the Town showing that the taxes have been paid in full. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on the account of the operation of the business by the former owner.

**8-312 RECORDATION OF TAX LIEN**

The treasurer for more effective collection of tax, may file with the clerk of the county commission/court of Boone County, a certified copy of an assessment of taxes under this article for recordation. A certificate so filed shall be recorded in the book in which similar certificates of the state are recorded or in any book provided for that purpose, and thereafter shall constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the Town as against all parties whose interest arose after such recordation. Upon payment of taxes delinquent under this article, the lien of which shall have been recorded, the treasurer shall 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 clerk of the county commission. Ther clerk of the county commission shall record the certificate in the book in which releases are recorded. From the date that such a certificate is admitted to record the land of the taxpayer in the Town shall be free from any lien for taxes under this article accrued to the date that the certificate was issued.

**8-313 COLLECTION BY DISTRAINT**

When authorized and directed by council, the treasurer shall distrain upon any goods, chattels, or intangibles represented by negotiable evidences of indebtedness of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder. The lien created by this article on real estate may be enforced by any means provided by law.

**8-314 OFFENSES**

1. No person shall refuse to make the return provided to be made in Section 8-301, or to make any false or fraudulent return of false statement in any return, with intent to defraud the Town or to evade payment of taxes, or any part thereof, imposed by this article; for any person to aid or abet another in any attempt to evade the payment of the tax or any part thereof, imposed by this article; for the president, vice president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false, return, or any false statement in any return required in this article, with the intent to evade the payment of tax hereunder.
2. Any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing, and on convection thereof, shall be punished in the manner provided by law.

**8-315 ADMINISTRATION OF ARTICLE; QUALIFICATIONS, POWERS AND DUTIES OF THE TREASURER**

This article shall be administered by an official who shall be known as: Treasurer of the Business and Occupation Tax Ordinance of the Town of Danville and such official has herein been referred to as treasurer.

1. The treasurer shall be a competent person for the duties of this office: he/she shall be elected as the recorder and the duties of treasurer shall be additional. The treasurer shall serve at the will and pleasure of the Mayor and receive such salary as council may prescribe.
2. The treasurer shall qualify for his/her office by taking the oath of office prescribed by the Town charter, and by filing a proper bond in the penal sum of at least three thousand dollars ($3,000.00)
3. The treasurer shall perform all the duties and functions as are devolved upon him by this article as may be prescribed hereafter by council. He/she shall prescribe forms and reasonable rules of procedure in conformity with this article, subject to approval of council, for the making of returns and for the ascertainment, assessment and collection of taxes imposed hereunder. The enforcement of any of the provisions of this article in any of the courts, either state or federal, shall be under the jurisdiction of the treasurer.

**8-316 CONSTRUCTION OF ARTICLE**

This article based upon the so-called “gross sales and privilege tax” law enacted by the legislature of West Virginia and it is intended that the same be construed within the light of such law, so far as the premises admit hereof.

**8-317 PENALTIES FOR UNLAWFUL DISCLOSURE OF INFORMATION**

1. Any officer, employee or agent of the Town or any former officer, employee, or agent of the Town who shall divulge facts or information obtained from returns or tax statements other than for the purpose of administering such tax shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than one thousand dollars ($1,000.00) or imprisonment for not more than one year, or both, together with costs of prosecution.
2. Any officer, employee or agent of the Town or any former officer, employee, or agent of the Town who shall make unauthorized disclosure of information received form the State Tax Commissioner under authority shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than one thousand dollars ($1,000.00) or imprisonment for not more than one year, or both, together with costs of prosecution.
3. For the purposes of this code, “unauthorized disclosure” shall mean the release to any person of any tax information obtained by the Town from the State Tax Commissioner unless:
	1. The person receiving the information is the authorized counsel of the State or Town and shall be suint the information only for the purpose of administering Business and Occupation taxes, 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 their right to secrecy.

**8-318 CHART OF FEES**

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| Class Code | Business Classification | Rate per $100.00 |
| 1 | Value of Production of Natural Resources | 1.0 |
| 2 | Timber | .55 |
| 3 | Retail | .20 |
| 4 | Wholesale | .13 |
| 5 | Water Companies | 2.0 |
| 6 | Electric Power Companies | 2.5 |
| 7 | Natural Gas Companies | 2.0 |
| 8 | All Other Public Utility Business | 1.25 |
| 9 | Contracting | 1.5 |
| 10 | Banking and Other Financial Institutions | .45 |
| 11 | Amusement | .17 |
| 12 | Service and All Other Business | .45 |
| 13 | Rentals, Royalties or Fees | .40 |
| 14 | Public Service or Utility: Bus Companies | 1.17 |
| 15 | Manufactured, Compounded or Prepared for Sale Product | .25 |

CROSS REFERENCES

Authority to tax – see W. Va. Code 8-13-5

Business and Occupation tax – see W. Va. Code Art. 11-13

Collection of taxes – see W. Va. Code 8-13-15 et seq.