

CHAPTER TWENTY

ARTICLE I - Business and Occupation Tax

20.1.1 Definitions – For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Banking business; financial organization. The term “banking business” or “financial organization” shall mean 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 branch office or branch place of business of any thereof, and any other similar business organization at least ninety percent of the assets of which consists of intangible personal property and at least ninety percent of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.

Business. The term “business” shall include all activities engaged in 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.

Company; person. The term “person” or the term “company,” herein used interchangeably, includes any individual, firm, co-partnership, joint adventure,

association, corporation, trust, estate 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.

Contracting. The term “contracting” shall include 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.

Gross Income. The term “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 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 deduction 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 20.1.10.

Gross Proceeds of Sales. The term “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.

Gross Income and Gross Proceeds of Sales. The “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 sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash 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 the State of West Virginia; or (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.

Recorder. The term “Recorder” shall mean the Recorder of the Town of Glasgow, together with such other person or persons as shall be designated, under the provisions of Section 20.1.38 of this chapter to assist the Recorder hereunder.

Sale; sales; selling. The terms “sale,” “sales” or “selling” include any transfer of the ownership of, or title to, property, whether for money or in exchange for other property.

Selling at Wholesale; Wholesale Sales. The terms “selling at wholesale” or “wholesale sales” shall mean and include: (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 of West Virginia, its institutions or its political subdivisions.

Service Business or Calling. The term “service business or calling” shall include all activities engaged in by a person for other persons for a consideration, which involves 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 or the renting or leasing of property, real or personal. 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 as to persons taxed pursuant to the provisions of Section 20.1.10 of this chapter.

Taxpayer. The term “taxpayer” means any person liable for any tax hereunder.

Tax Year; Taxable Year. The terms “tax year” or “taxable year” mean either the calendar year, or the taxpayer’s fiscal year when permission is obtained from the Recorder to use the same as the tax period in lieu of the calendar year.

20.1.2 Imposition of Privilege Tax.—There is hereby levied and imposed and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in Sections 20.1.3 to 20.1.10, inclusive.

If any person liable for any tax under Section 20.1.3 or 20.1.10 shall ship or transport his products, or any part thereof, out of the town 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 town shall be the basis for the assessment of the tax imposed in those sections.

Gross income included in the measure of the tax under Section 20.1.3, except in the production of natural gas, shall neither be added nor deducted in computing the tax levied under the other sections of this chapter.

In determining value, however, as regarding sales from one to another of affiliated companies or 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 value upon which such privilege tax shall be levied shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interests exist between the buyer and the seller but where the circumstances or conditions are otherwise similar.

20.1.3 Manufacturing, Compounding or Preparing Products.—Upon every person engaging or continuing within the town 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 or articles, substance or substances, commodity or commodities, except electric power produced by public utilities or others, the amount of the tax shall be equal to the value of the article, substance, or commodity 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 otherwise provided, multiplied by a rate of thirty one-hundredths of one percent.

Persons exercising any privilege taxable under this section, and engaging in the business of selling their manufactured products in the town, shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate set forth in Section 20.1.4 for the privilege of engaging in the business of selling such manufactured goods in the town.

The measure of the tax in this section is the value of the entire product manufactured, compounded or prepared in the Town for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the Town.

A person exercising any privilege taxable under this section shall not be required to pay the tax imposed in Section 20.1.4 for the privilege of selling his manufactured products for delivery outside the Town, but the gross income derived from the sale of such products outside the Town, shall be included in determining the measure of the tax imposed on such person in this section.

It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the town and

partially manufactures, compounds or prepares such products outside the town, the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within the town bears to the entire payroll cost of manufacturing the product.

A person exercising any privilege taxable under this section and engaging in the business of selling his products at retail in the town shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 20.1.4 for the privilege of engaging in the business of selling such products at retail in the town.

The dressing and processing of food intended for human consumption by a person, 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 Section 20.1.4 either as wholesale or retail sale, as the case may be.

Persons who manufacture, compound or prepare products outside the town and who make sale of the same within the town shall not pay the tax imposed by this section but shall pay the tax imposed by Section 20.1.4 for the privilege of selling such product within the town. If any person shall ship or transport his products or any part thereof out of the state 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 state shall be the basis for the assessment of the tax imposed in such sections, except in those instances in which another measure of the tax is expressly provided. The Recorder shall prescribe equitable and uniform rules for ascertaining such value.

20.1.4 The Business of Selling Tangible Property; Sales Exempt – Upon every person engaging or continuing within the town in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectioneries and other public eating houses, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equal to five-tenths of one percent of the gross income of the business; except, that in the case of selling at wholesale, the tax shall be equal to three twentieths of one percent of the gross income of the business.

A person exercising any privilege taxable under Section 20.1.3, and engaging in the business of selling his manufactured products in the town, shall be required to make returned of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate of three-twentieths of one percent for the privilege of engaging in the business of selling such manufactured products in the Town.

20.1.5 Public Service or Utility Business – Upon any person engaging or continuing within this 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 carriers, there is likewise 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: Water companies, two percent; electric light and power companies, four percent on sales and demand charges for domestic and commercial lighting and three percent on sales and demand charges for all other purposes except as to income received by municipally-owned plants producing

or purchasing electricity and distributing same; natural gas companies, three percent of the gross income, and upon all other public service or utility business, including the providing of television cable service, two percent.

20.1.6 Business of Contracting – Upon every person engaging or continuing within this Town in the business of contracting, the tax shall be equal to two percent of the gross income of the business.

20.1.7 Business of Operating Amusements – Upon every person engaging or continuing within this town in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, racetrack, radio broadcasting station, television broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to five-tenths of one percent of the gross income of the business.

20.1.8 Sale of Insurance by an Insurance Agent, Service Business, or Calling Not Otherwise Specifically Taxed

A. Findings of Fact – The Council of the Town of Glasgow, West Virginia after thorough consideration of all factors relevant thereto, does hereby make the following findings of fact:

(1) The Town, in recent years, has not created any new businesses and in fact is subject to lose business if a change in the business and occupational taxes are not implemented.

(2) In order to operate and promote the Town of Glasgow and in order for the Town of Glasgow to assist current businesses as well as prospective new businesses, the Town feels that a new category shall be created under the business

and occupation tax allowing the sale of insurance by insurance agents to have a decrease tax rate of one half of one percent of the gross income of any such business.

(3) The rates hereinafter contained are just and reasonable; are applied without unjust discrimination or preference; and are based primarily upon the creation and the retention of future business in the Town of Glasgow.

B. Sale of Insurance by an Agent, etc. – Upon every person engaging in the sale of insurance, as an insurance agent, and who is principally located within the corporate limits of the Town of Glasgow, there is hereby levied and should be collected a tax equal to one half of one percent of the gross income of any such business.

Upon every person engaging or continuing with this town in any service business calling not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be collected a tax equal to one percent of the gross income of any business.

C. Effective Date – The effective date of this amendment shall be January 1, 1994.

20.1.9 Business of Furnishing Property for Hire – (Repealed October 3, 1988)

20.1.10 Banking and Other Financial Businesses; Findings of Town Council – Upon every person engaging or continuing within this town in the business of banking or financial business, the tax shall be equal to one percent of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however

denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property; provided, that gross income shall not include (a) interest received on the obligations of the United States, its agencies and instrumentalities; (b) interest received on the obligations of the State of West Virginia 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 non-transients; provided, that all interest derived on activities exempt under (c) above, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

Gross income of a banking or financial business, from whatever source derived, shall be taxable under this section only and persons taxed pursuant to the provisions of this section shall not be taxed under Sections 20.1.3 to 20.1.9 and Section 20.1.11, inclusive, of this chapter.

Upon every person engaging or continuing within this town in the business of making loans of money, credit goods, or things in action, who, because of such activity is required under the laws of the State of West Virginia to obtain a license from the commissioner of banking of the state, the tax shall be one percent of the gross income of any such activity, notwithstanding any other provisions of this chapter.

The Town Council hereby finds and declares that it is the intent of the Council to subject national banking associations and other financial organizations, and any branch office or branch place of business of any thereof, to the tax imposed by this

chapter, in accordance with the authorization contained in Section 5219 of the Revised Statutes of the United States as amended by Public Law 91-156 enacted December 24, 1969.

20.1.11 Business of Generating or Producing Electric Power; or Natural Gas; Exception; Rates – (Omitted by Amendment)

20.1.12 Exemptions – There shall be an exemption in every case of five dollars in amount for each tax year of tax computed under the provisions of this chapter. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be credited to an exemption of the sum bearing the proportion to five dollars that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

The provisions of this chapter shall not apply to: (a) Insurance companies which pay the State of West Virginia a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this town, 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, but such exemption shall not apply to cemeteries operated for commercial profit; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of 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 7 and or, Chapter 60 of the Code of West Virginia; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; or (e) production credit association, organized under the provisions of the federal "Farm Credit Act of 1933", provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of Chapter 4 and or Chapter 19 of the Code of West Virginia.

20.1.13 Tax Cumulative – The tax imposed by this chapter shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade, calling or activity. A person exercising a privilege taxable under this chapter, 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 chapter.

20.1.14 Computation of Tax; Quarterly Payments – 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 it and mail it, together with a remittance, in the form required by Section 20.1.15, of the amount of the tax to the office of the Recorder. In estimating the amount of the 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 chapter does not exceed the sum of twenty dollars

in any year, the taxpayer may pay the tax quarterly as aforesaid or, with the consent in writing of the Recorder, at the end of the month next following the close of the tax year.

Any other provision of this section notwithstanding, the Recorder, if he deems it necessary to insure payment of the tax, may require the return and payment under this section for periods of shorter duration than quarter year periods.

20.1.15 Return and Remittance; Tax Year – On or before thirty days after the end of the tax year, each person liable for the payment of a tax under Section 20.1.2 shall make a return showing the gross proceeds of sale or gross income of business, trade, calling or activity and compute the amount of tax chargeable against him in accordance with the provisions of this chapter, and transmit with his report a remittance in the sum required by this section covering the remainder of the tax chargeable against him in the office of the Recorder. 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 the 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, group or unit shall take the oath on behalf of the taxpayer.

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 taxable under this chapter, keeps the books reflecting the same on a basis other than the calendar year, he may, with the written consent of the Recorder, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

All remittances of taxes imposed by this chapter shall be made to the Recorder, in lawful money of the United States or by bank draft, certified check, cashier's check, money order or certificate of deposit, who shall pay the money into the town treasury, to be kept and accounted for by law.

20.1.16 Extensions of Time; Payment Plans – The Recorder may grant a reasonable extension of time for payment of tax or any installment, or for filing the annual return or quarterly estimate required pursuant to this chapter, on such terms and conditions that he may require. No such extension shall exceed six months.

The Recorder may extend the time for payment of an amount determined as a deficiency for a period not to exceed twelve months from the date designated for payment of the deficiency. An extension of this time may be granted only where it is clearly established to the satisfaction of the Recorder that the payment of a deficiency upon the date designated for payment would result in undue hardship.

If any extension of time is granted for payment of any tax or deficiency, the Recorder may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the Recorder may require.

20.1.17 Records, Statements and Investigations – For the purpose of ascertaining the correctness of a tax return or an assessment or for the purpose of making an estimate of any taxpayer's liability for the tax administered under this chapter, the Recorder shall have the power to examine or cause to be examined by any agent or representative designated by the Recorder, any books, papers, records, memoranda or other documents bearing upon the matters required to be included in the

return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge of the matters contained therein. In connection therewith the Recorder may take testimony and shall have the power to administer an oath to such person or persons.

The Recorder may prescribe rules and regulations as to the keeping of records, the content and form of returns and the filing of copies of West Virginia State Business and Occupation Tax returns and determinations. The Recorder may require any person, by notice served upon such person, to make such returns and keep such records as the Recorder may deem sufficient to show whether or not such person is liable under this chapter for tax.

20.1.18 Secrecy of Returns – It shall be unlawful for any officer or employee of the town to divulge or make known in any manner the tax return, or any part thereof, of any individual, firm, or corporation, or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the Recorder by this chapter imposing any tax administered under this chapter, or by any rule or regulation of the Recorder issued thereunder.

Any officer or employee of the town who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one year, or both, together with costs of prosecution.

Any person protected by the provisions of this chapter may, in writing, waive the secrecy provisions of this section for such purpose and such period as he shall therein state, and the Recorder, if he so determines, may thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of this chapter.

This section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular reports and the items thereof.

20.1.19 Reciprocal Exchange – The Recorder may permit the proper officer, or his authorized representative, of the United States or the State of West Virginia or any political subdivision of the state to inspect returns filed with the Recorder or may furnish to such officer or representative a copy of any such return; provided, that such other jurisdiction grants similar privileges to the Recorder of the town.

20.1.20 Report of Change in Taxpayer's State Return – If the amount of taxpayer's gross income, business classification or tax liability reported on his West Virginia Business and Occupation Tax Return for any taxable year is adjusted, reclassified, changed or corrected by the West Virginia Tax Commissioner's Office, the taxpayer shall report such adjustment, reclassification, change or correction within ninety days after the final determination of such change by the Tax Commissioner, and shall concede the accuracy of such determination or state therein where it is erroneous. Any taxpayer filing an amended West Virginia Business and Occupation Tax Return

shall also file within ninety days thereafter an amended return with the Recorder, and shall give such information as the Recorder may require.

In the event of a final determination by the West Virginia Tax Commissioner of a deficiency in the taxpayer's West Virginia Business and Occupation Tax liability, the period of limitations upon assessment of a deficiency reflecting said final determination in the tax imposed by this chapter shall not expire until ninety days after the Recorder is advised of the determination by the taxpayer as required by this section.

20.1.21 Mathematical Errors; Collection of Balance Due on Return

Without Remittance.—When a mathematical error appears on the face of the annual return (including an overstatement of the credit for the amount paid as a quarterly installment), the Recorder shall correct such error and notify the taxpayer, in writing, of the deficiency in the tax. The taxpayer shall have ten days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within ten days, the Recorder shall make an assessment of such deficiency in accordance with Section 20.1.22 and shall give the taxpayer written notice thereof.

If a taxpayer files a mathematically correct annual return which reflects a balance due to the tax administered under this chapter, and if full payment thereof has not been made, the Recorder shall notify the taxpayer, in writing, of the amount of tax, penalties and interest due. The taxpayer shall have ten days after receipt of such notice within which to make such payment. If the taxpayer fails to make payment within such ten-day period, the Recorder shall proceed to collect the amount due.

20.1.22 Assessment of Tax When Insufficiently Returned – If the Recorder believes that the tax imposed by this chapter 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 of the taxpayer and make an assessment therefor. Assessments shall be served upon the taxpayer either personally or by certified mail.

20.1.23 Notice of Assessment; Petition for Reassessment – The Recorder shall give the taxpayer written notice of any assessment made pursuant to this chapter. Unless the taxpayer to whom a notice of assessment is given shall, within thirty days after service thereof, either personally or by certified mail, file with the Recorder a petition in writing, verified under oath by the taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections, the assessment shall become final and not subject to administrative or judicial review. The amount of an assessment shall be due and payable on the day following the date upon which assessment becomes final.

20.1.24 Hearing Procedure; Administrative Decision – When a petition for reassessment provided for in section 20.1.23 is filed within the time prescribed for such filing, the Recorder shall assign a time and a place for a hearing thereon and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof. Such hearing shall be held within one hundred days from the date of filing the petition unless continued by agreement of the parties or by the Recorder for sufficient cause.

The hearing shall be informal and shall be conducted in an impartial manner by the Recorder or a hearing examiner designated by the Recorder. The burden of proof shall be upon the taxpayer to show the assessment is incorrect and contrary to law, in whole or in part.

After any such hearing, the Recorder shall, within a reasonable time, give notice in writing of his decision.

20.1.25 Appeals to Circuit Court – An appeal may be taken by the taxpayer to the circuit court of Kanawha County within thirty days after service of the Recorder's decision.

The appeal shall be taken by the filing of a petition and notice, which petition and notice shall be served upon or accepted by the Recorder as an original notice. When the petition and notice are so served it shall, with the return or acceptance thereon, be filed in the office of the clerk of the circuit court and docketed as other cases with the taxpayer as plaintiff and the Recorder as defendant. The filing of the appeal shall not stay the collection of the tax. The collection of the tax shall be stayed if the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by the clerk, the penalty of the bond to be not less than the total amount of the tax, interest and penalties (to such date) appealed from, and conditioned that the plaintiff shall perform the orders of the court; provided, that the judge of the circuit court may stay the collection of the tax without the requirement of a bond upon a proper showing by the taxpayer that the properties of the taxpayer are sufficient to secure performance of the court's orders or that the ends of justice will be served thereby.

The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the Recorder. In such appeal a certified copy of the Recorder's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this chapter. The court shall render its decree thereon and a certified copy of the decree shall be filed by the clerk of the court with the Recorder who shall then correct the assessment in accordance with such decree.

Unless an appeal is taken pursuant to this section within thirty days after service of the administrative decision, the Recorder's decision shall become final and conclusive and not subject to administrative or judicial review. The amount, if any, due the Town under such decision shall be due and payable on the day following the date upon which such decision becomes final.

20.1.26 Methods of Collection – The Recorder shall collect the taxes, interest and penalties imposed by this chapter. In addition to all other remedies available for the collection of debts due the Town, the Recorder may proceed by foreclosure of the lien provided in section 20.1.27.

20.1.27 Tax Constitute Debt; Lien Created; Enforcement of Lien – Any tax, penalties or interest due and payable under this chapter shall be a debt due the Town. It shall be a personal obligation of the taxpayer and shall be a lien upon the real and personal property of the taxpayer. This lien shall have priority over all other liens except those due the State of West Virginia and the United States of America.

The lien created by this section shall continue until the liability for the tax, interest and penalties is satisfied or becomes unenforceable by reason of lapse

of time. The Recorder shall issue his certificate of release of any lien imposed pursuant to this section upon finding that the liability for the amount assessed has been fully satisfied or has become legally unenforceable.

The lien created by this section shall be subject to the restrictions and conditions embodied in Chapter 10c, and/or Chapter 38 of the Code of West Virginia.

20.1.28 Injunction – If the failure of any taxpayer to comply with the provisions of this chapter shall have continued sixty days, the Recorder may proceed to obtain an injunction restraining the taxpayer from doing business in this Town until he fully complies with the provisions of this chapter. In any proceeding under this section upon judgment or decree for the plaintiff, he shall be awarded his costs.

20.1.29 Refunds – Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this chapter shall file his claim within three years after the due date of the return in respect of which the tax was imposed or within two years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid, and not thereafter. Notwithstanding such period of limitation, the taxpayer may file a claim for refund within ninety days after a final determination by the State Tax Department of an overpayment in the taxpayer's State of West Virginia Business and Occupation tax liability.

If, on such petition and the proofs filed in support thereof, the Recorder shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, he shall refund the same to the taxpayer. If the Recorder shall be in doubt as

to whether or not there exists an overpayment, he may institute against the taxpayer a declaratory judgment proceeding in the Circuit Court of Kanawha County to ascertain whether or not there exists an overpayment of tax, interest or penalty, or any part thereof. If the Recorder is of the opinion that there exists no overpayment of tax, interest or penalty, or any part thereof, he shall notify the taxpayer and the taxpayer, if not satisfied with the opinion, may, within thirty days after notice of such opinion, give written notice to the Recorder to institute against the taxpayer a declaratory judgment proceeding to ascertain whether there exists an overpayment of any tax, interest or penalty, or any part thereof. Upon receipt of such request, the Recorder shall promptly institute such proceeding in the circuit court of the county; provided, that the Recorder shall be under no duty to institute any such declaratory judgment proceeding unless it shall appear that the taxpayer giving the notice as herein provided is acting in good faith and that there is a substantial question as to whether or not there is an overpayment of tax, interest or penalty, or any part thereof.

If it is finally determined in a declaratory judgment that any tax, interest or penalty, or any part thereof, has been overpaid, the Recorder shall promptly refund the same to the taxpayer. The taxpayer or the Recorder may appeal the decision of the Circuit Court of the County to the State Supreme Court of Appeals.

20.1.30 Limitation on Assessments – The amount of tax, interest and penalties imposed by this chapter shall be assessed within three years after the due date of the return; provided, that in the case of a false or fraudulent return filed with the intent to evade the tax or in case no return is filed, the assessment may be made at any time.

20.1.31 Interest and Penalties

- a. The tax imposed by this chapter, if not paid when due, shall bear interest at the rate of six percent per annum from the due date of the return until paid.
- b. If any taxpayer fails to make the return or any quarterly installment required by this chapter, 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 Recorder may waive in whole or in part these penalties.
- c. Interest and penalties may be collected in the same manner as the tax imposed by this chapter.

20.1.32 Payment When Person Sells Out or Quits Business; Liability of Successor; Liens – If any person subject to any tax administered under this chapter sells out his or its business or stock of goods, or ceases doing business, any tax, penalties and interest imposed by this chapter shall become due and payable immediately and such person shall, within thirty days after selling out his or its business or stock of goods or ceasing to do business, make a final return and pay any tax that may be due. The unpaid amount of any such tax shall be a lien upon the property of such person.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy any tax, penalties and interest which may be due until the former owner shall produce a certificate from the Recorder evidencing the

payment thereof. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided above, and if any such tax, penalties and interest remain unpaid after expiration of the thirty-day period allowed for payment thereof, the purchaser shall be personally liable for the payment of any such tax, penalties and interest and the same shall be recoverable by the Recorder.

20.1.33 Settlement of Contracts Made With Town – All officers, employees and agents making contracts on behalf of the Town shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the Recorder that all taxes levied or assessed under this chapter against the contractor with respect to such contracts have been paid.

20.1.34 Final Settlement With Nonresident Contractor; User Personally Liable – Any person contracting with a nonresident person engaged in a business or service taxed under this chapter shall withhold payment in sufficient amount to cover taxes assessed by this chapter in the final settlement of such contracts until the receipt of a certificate from the Recorder to the effect that all taxes levied and accrued under this chapter against the contractor have been paid.

If any person shall fail to withhold as provided herein, he shall be personally liable for the payment of all such taxes, and the same shall be recoverable by the Recorder by appropriate legal proceedings.

20.1.35 Limited Effect of Recorder's Certificate – The certificate of the Recorder provided for in Sections 20.1.32 to 20.1.34 inclusive, shall not bar subsequent investigations, examinations, audits, assessments and refunds with respect to the taxpayer.

20.1.36 Business Activities In More Than One Municipality – Whenever the business activity or occupation of the taxpayer is engaged in or carried on in the Town of Glasgow and in one or more other municipalities of this State, the amount of gross income, or gross proceeds of sales, taxable by each municipality, including the Town of Glasgow, shall be determined in accordance with such regulations as the Tax Commissioner of West Virginia may prescribe. It is the intent of this ordinance that multiple taxation of the same gross income, or gross proceeds of sales, under the same classification by this and one or more other municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this State, that is presently subject to State Tax under Section 20.1.4 or 20.1.8 of this chapter, which is not taxed or taxable by any other municipality of West Virginia, may be included in the measure of tax for the Town of Glasgow, if the activity was directed, occurred, or in the absence thereof, the principal office of the taxpayer is located in the Town of Glasgow.

20.1.37 Offenses – It shall be unlawful for any person to refuse to make the return required to be made in Section 20.1.15; or to make any false or fraudulent return or false statement in any return with the intent to defraud the Town, or to evade the payment of the tax, or any part thereof, imposed by this chapter, or 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 chapter; or 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 chapter, with the intent to evade the payment of any tax hereunder.

20.1.38 Administration and Enforcement – The Administration of this chapter is vested in, and shall be performed by, the Recorder of the Town: provided, that the Mayor or the Common Council of the Town may, at any time or from time to time, authorize one or more other persons to assist the Recorder in such Administration, and may delegate to such other person or persons the power to perform, under the supervision of the Recorder, any of the powers and duties vested in the Recorder in this chapter. The Recorder shall prepare forms and may promulgate reasonable rules and regulations in conformity with the provisions of this chapter for the making of returns, and for the ascertainment, assessment, and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this chapter.

20.1.39 Severability – In the event any section or portion of section of this chapter is adjudicated to be invalid, such adjudication shall in no way affect or impair the validity of any other section or portion of section of this chapter.

20.1.40 Effective Date – This chapter shall become effective, and the taxes herein imposed shall become operative, on the first day of January in the year 1988.
(NOTE: Effective January 1, 1988; Amended October 3, 1988).