

TITLE 17

TWO PERCENT (2%) PUBLIC UTILITY TAX

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CHAPTER 1 – IN GENERAL

An excise tax upon the privilege of purchasing, using or consuming within the corporate limits of this municipality any public utility service and tangible personal property supplied by any public utility subject to the jurisdiction of the Public Service Commission of West Virginia (whether such public utility be privately or municipality owned or otherwise owned by any type of governmental entity) is hereby imposed and levied as follows:

SECTION 17-101 DEFINITIONS

“PERSON” includes individuals, firms, partnerships, associations, corporations, and combinations thereof, of whatever form or character.

“PUBLIC UTILITY SERVICE” means all services and tangible personal property purchased within this municipality a seller, as hereinafter in this section defined, namely, telephone service, electric service, gas service, including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia; Water Service and Sanitary Sewer Service; if purchased, used or consumed within the corporate limits of this municipality.

“PURCHASER” includes every person who purchases, uses, or consumes a public utility service.

“SELLER” includes every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the

jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies a public utility service; and,

“**USER**” means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.

SECTION 17-102 IMPOSITION AND LEVYING OF TAX: AMOUNT OF TAX

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of this municipality, such public utility service. Such tax shall be in the amount of two percent (2%) of the charge (exclusive of any federal or state tax thereon imposed upon the purchaser) made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this Ordinance is in addition to all other taxes imposed and levied by this municipality. In the event the amount of the charge for any single public utility service exceeds the sum of Twenty Thousand Dollars (\$20,000.00) in any given calendar month, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of said amount of Twenty Thousand Dollars (\$20,000.00). In the event more than one public utility shall furnish the identical public service to the same purchaser, said purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service.

SECTION 17-103 COLLECTION; TIME OF PAYMENT; ACCOUNTING; EFFECTIVE DATE OF ORDINANCE; PRORATION

It shall be the duty of every seller in acting as the tax collection medium or agency for this municipality to collect from each purchaser for the use of this municipality the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of the tax actually collected during each calendar month shall be reported by each seller to this municipality and each seller shall remit the amount of tax shown by said report to have been collected to this municipality on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The tax imposed and levied by this Ordinance shall apply to periodic statements rendered after APRIL ONE, one thousand nine hundred eighty-five and when any such periodic statement covers public utility service rendered both before and after said date, only that portion of the charge for public utility service rendered after said date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after APRIL ONE, one thousand nine hundred eighty-five within the period covered by such periodic

statement. The required reports shall be in the form prescribed by the official of this municipality charged with the responsibility of collecting taxes due this municipality.

SECTION 17-104 RECORDS: INSPECTION THEREOF

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

SECTION 17-105 EXEMPTIONS

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

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

SECTION 17-106 NONLIABILITY OF UTILITY: DUTY OF MUNICIPALITY: REFUNDS: RULES AND REGULATIONS

There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owned by such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of this municipality, the seller shall refer the question to the official of this municipality charged with the responsibility of collecting taxes due to this municipality, and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed

in writing to do by such officials of this municipality. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

The official of this municipality shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this Ordinance.

SECTION 17-107 ENFORCEMENT PROVISIONS; PENALTIES

Any amount of tax due and unpaid under this Ordinance shall be a debt due this municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in section fifteen, article thirteen, chapter eight of the Code of West Virginia, one thousand nine hundred and thirty-one, as amended, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

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

SECTION 17-108 NOTICE TO UTILITIES

The tax hereby imposed and levied shall not be effective until this municipality gives sixty (60) days written notice by certified mail of the effective date of the ordinance to any public utility doing business within the municipality, which is required to collect the tax imposed and levied hereby.

SECTION 17-109 SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held unconstitutional or invalid, such constitutionality or invalidity shall not affect other provisions or applications of this Ordinance and to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 17-110 REBATES TO QUALIFIED APPLICANTS

All purchasers with gross annual income of less than Ten Thousand Dollars (\$10,000.00) for the previous year may apply for a refund of any tax levied pursuant to this title. Proof of income must be submitted in person to the Town Recorder who shall maintain a file and verify the continued accuracy of such proof at least annually. All rebate checks will be issued quarterly to qualified purchasers.