

**ORDINANCE # 712**

**AN ORDINANCE AMENDING ARTICLE 711 BUSINESS AND OCCUPATION TAX,  
SECTION 711.04(C) IMPOSITION OF PRIVILEGE TAX, REDUCING THE RATE ON THE  
BUSINESS OF SELLING TANGIBLE PROPERTY AT RETAIL, OF THE CODIFIED  
ORDINANCES OF THE CITY OF SUMMERSVILLE**

**NOW THEREFORE BE IT ORDAINED** by the City of Summersville, as follows:

1. The City of Summersville, hereby amends "Article 711 Business and Occupation Tax" of the Codified Ordinance of the City of Summersville, by striking and inserting the language reflected in the attached Exhibit 1 and incorporated herein by reference, by amending and reducing the tax rate on the Business of Selling Tangible Property at retail of Section 711.04(c), from one-fourth of one percent of the gross income of the business to a rate equal to .125 of one percent of the gross income of the business.
2. Severability. The portions of this ordinance and Article 711 shall be severable. In the event that any portion of this ordinance or Article 711 is found by a court of competent jurisdiction to be invalid, the remaining portions of this ordinance are valid, unless the court finds that the valid portions of this ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Common Council of the City of Summersville would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.
3. The Mayor and the Recorder are hereby authorized to witness, deliver, codify, publish and implement Article 711 and to take all steps necessary or customary with the adoption of this Ordinance.
4. Upon adoption of this ordinance by City Council, the city Recorder shall forthwith send to the Tax Commissioner a certified copy of this ordinance.
5. The amended code section in Exhibit 1 shall become effective upon its adoption by the City

Council of this City on November 28, 2022. However, the City Council hereby suspends the rate reduction in the retail classification until July 1, 2023.

Passed on First Reading: November 14, 2022

Adopted on Second Reading: November 28, 2022

  
By: Robert Shafer, Mayor

CERTIFICATION

The undersigned Recorder of the City of Summersville, West Virginia, does hereby certify that the attached is a true, accurate and sealed copy of the Ordinance enacted by the City Council of Summersville on 11-28-22. This submission is in accordance with the provisions of West Virginia Code §8-1-5a, as amended.

Given under my hand and seal on this 28th day of November, 2022.

City of Summersville,  
WEST VIRGINIA

  
By: Gary Withee  
Its: Recorder

## **Exhibit 1 – Amendments to Article 711.04**

### **ARTICLE 711**

#### **Business and Occupation Tax**

##### **711.04 IMPOSITION OF PRIVILEGE TAX.**

There is hereby levied 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 application of rates values or gross income as set forth in subsection (a) to (k) hereof.

If any person liable for any tax under subsection (a) or (b) hereof shall ship or transport its products out of the Municipality without making sales of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the Municipality shall be on the basis for assessment of the tax imposed in those sections. The City Recorder may prescribe equitable and uniform rules of ascertaining such value; provided that, in the absents of such rules, the person producing or manufacturing the products within the Municipality shall report the value in a consistent and reasonable manner.

In determining the value, however, as regards sales from one to another of affiliated companies or persons, or under circumstances where the relations between the buyer and 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 City Recorder shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale or similar products of like quality or character where no common interest

Exist between the buyer and seller but the circumstances and conditions are otherwise similar. Gross income including in the measure of the tax under subsections (a) or (b) hereof, shall neither be added nor deducted in computing the tax levied under the other sections of this article.

A person exercising any privilege taxable under subsections (a) or (b) hereof and engaging in the business of selling his natural resources or manufactured products in this City, shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in subsection (c) hereof for the privilege of engaging in the business of selling such natural resources or manufactured products in the City.

Manufacturers exercising any privilege taxable under subsection (b) hereof shall not be required to pay the tax imposed in subsection (c) hereof for the privilege of selling their manufactured products for delivery outside of this City, but the gross income derived from the sale of such manufactured products outside the City shall be included in determining the measure of the tax imposed on such products outside of the City shall be included in determining the measure of the tax imposed on such manufacturer in subsection (b).

The municipal business and occupation tax is imposed to each person engaged in privileges taxable under this article if such person is engaged in purposive revenue generating activities within the Municipality's limits and such person has sufficient contacts to sustain the Municipality's taxing jurisdiction. By way of example (but not limitation), if a person's activities within the Municipality contribute to the establishment and maintenance of the market, such contacts are considered to be sufficient to sustain the Municipality's taxing jurisdiction assuming federal constitutional nexus standards are satisfied.

(a) Natural Resource Production. Upon every person engaging or continuing within the Municipality in the business of serving, extracting, mining, quarrying. Reducing to possession and/or producing for sale, profit or commercial use of any natural resource products, the amount of such taxes shall be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer except as hereinafter provided, multiplied by the

respective rates as follows: Coal - .67 percent; Limestone or sandstone quarried or mined - 1.00 percent; Oil or blast furnace slag - 1.97 percent; Natural gas in excess of the value of 1,250.00 (Quarterly Exemption) - 3.92 percent; Sand, gravel or other mineral products, not quarried or mined - 1.97 percent; Timber 1.00 percent; and other natural resources products - 1.30 percent. The measure of this tax is the value of the entire production in the Municipality, regardless of the place of sale or the fact that delivery may be made to points outside the Municipality.

A person exercising privileges taxable under this section and using or consuming the natural resources so produced in his/ her business or transferring or delivering the natural resources as any royalty paid, in kind, or the like, shall be deemed to be engaged in the business of producing natural resources and shall be required to make returns on account of the production of the business, showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which privilege taxes shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers.

Persons who produce natural resources outside the Municipality and who make sale of those products within the Municipality shall not pay the tax imposed by this section but shall pay the tax imposed by subsection (c) hereof for privilege of selling such products within the Municipality.

A person exercising any privilege under this section and engaging in the business of selling its natural resource products in the Municipality shall be required to make returns of the gross proceeds of such sale and pay the tax imposed in subsection (c) hereof for the privilege of engaging in the business of selling such natural resource products in the Municipality.

(b) Manufactured, compounded or prepared products; Processing of poultry and turkeys not considered as Manufacturing or Compounding. Upon every person engaged or continuing within this City 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, or electric power not produced by public utilities taxable under other provisions of this article, the amount of the tax to be equal to the value of the article, substances, commodity or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or persons compounding or preparing the same, except as otherwise provided, multiplied by a rate of two-tenths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this City for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside of the City. However, the dressing and processing of poultry and turkeys by a person, firm or corporation, which poultry and turkeys are to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products on a wholesale basis shall be subject to the same tax as is imposed on the business of selling at wholesale as provided in subsection (c).

(c) Business of Selling Tangible; Property Sales Exempt. Upon every person engaging or continuing within this City in the business of selling any tangible property whatsoever, real or personal, including the sale of food, and the services incident to the sale of food in hotels, restaurants, cafeterias, confectioneries, and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or of the selling stocks, bonds, or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to one-fourth of one percent of the gross income of the business, except that in the business of selling at wholesale the tax shall be equal to .125 of one percent of

the gross income of the business. Provided that, on and after July 1, 2023, the respective tax rate at retail provided in this section is reduced such that upon every person engaging or continuing within this City in the business of selling any tangible property whatsoever, real or personal, including the sale of food, and the services incident to the sale of food in hotels, restaurants, cafeterias, confectioneries, and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or of the selling stocks, bonds, or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to 0.125 of one percent of the gross income of the business, except that in the business of selling at wholesale the tax shall remain and be equal to 0.125 of one percent of the gross income of the business.

(d) Upon any person engaging or continuing within the City in any public service or utility business, except railroad, railroad car, telephone company, telegraph company, express pipe line, water carriers by steamboat or steamship and motor carriers, there is likewise 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: water companies, two percent except as to income received by Municipally-owned water plants; electric light and power companies, 2.6 percent on sales and demand charges for domestic purposes and commercial lighting and 1.95 percent on sales and demand charges for all other public service and utility business. 1.3 percent. 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 upon the appropriate section or sections of this article.

(e) Business of Contracting. Upon every person engaged or continuing within this City in the business of contracting, the tax shall be equal to 1.0 percent of the gross income of the business. Contractors engaged in business outside the corporate limits and who are subject to the payment of similar tax in other towns or cities are hereby exempt on so much of their said business as is done outside of the City of Summersville.

(f) Business of Operating Amusements. Upon every person engaged or continuing within this City in the business of operating a theatre, opera house, moving picture show, vaudeville. Amusement park, dance hall, skating rink, race track, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to .325 of one percent of the gross income of the business.

(g) Service Business or Calling Not Otherwise Specifically Taxed. Upon every person engaged or continuing within this City in any kind of service business or calling not otherwise specifically taxed under this law, there is likewise hereby levied and shall be collected a tax equal to .525 percent of the gross income of any such business. Gross income or gross proceeds of sales derived from services within West Virginia that are not taxed or taxable by any other municipality are included in the measure of tax under this article if the services are either directed from a location in the Municipality or the taxpayer's principal West Virginia office is located in the Municipality. Without limiting the generality of the foregoing. When a taxpayer has only one (1) office location and this office is located within the Municipality and its activities elsewhere in West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this Municipality.

(h) Business of Furnishing Property for Hire. Upon every person engaged or continuing within this City in the business of furnishing any real or tangible personal property, which has a tax situs in this City or any interest therein for hire, loan, lease or otherwise, whether the return be in the

form of rentals, royalties, fees or otherwise, the tax shall be .525 percent of the gross income of any such activity.

"Tangible personal property" as used herein, shall not include money or public securities.

(i) Small Loan and Industrial Loan Businesses. Upon every person engaging or continuing within this City in business of making loans of money, credit goods, or things in action, who because of such activity is required under the provisions of article seven-a chapter forty-seven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, to obtain a license from the Commissioner of Banking of the State of West Virginia, and upon each and every industrial loan company, the tax shall be .525 percent of the gross income of any activity, notwithstanding any other provision of this article.

(j) Banking and Other Financial Businesses. Upon every person engaged or continuing within the City in the business of banking or financial business, the tax shall be equal to .525 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:

(1) Interest received on the obligations of the United States, its agencies and instrumentalities;

(2) Interest received on the obligations of this 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

(3) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by non-transient; provided further, that all interest derived on activities exempt under subsection (c) above shall be reported, as to amounts, on the return of a person taxable under the provision of this article.

(k) Additional Credits. A person taxable under subsection (c) hereof with respect to selling products at wholesale in this Municipality shall be allowed a non-refundable credit against the tax imposed of such wholesale sales pursuant to subsection (c) for any:

(1) Manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in the Municipality, and/or;

(2) Extracting taxes paid by such person with respect to the extracting of products so sold in this Municipality or ingredients of products so sold at wholesale in this Municipality.

(l) Definitions. For purposes of this section:

(1) "Manufacturing tax" means a gross receipt tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a manufacturer and includes the tax imposed in subsection (a) through (k) hereof and similar gross receipts taxes paid to other municipalities or other local government units (other than State governments) within the United States.

(2) "Extracting tax" means a gross receipt tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a producer of natural resource products and includes the tax imposed in subsection (a) through (k) hereof and similar gross receipts taxes paid to other municipalities or other local government units (other than State governments) within the United States.

(3) "Gross receipts tax" means a tax which is imposed on or measured by the gross volume of business in terms of gross receipts or in other terms and in the determination of which deductions

allowed would not constitute the tax, an income tax or value added tax and which is not, pursuant to law or custom, separately stated from the sale price.

(m) If imposition of the Municipality's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed to credit to the extent necessary to preserve the validity of the tax under this article, and still apply the tax to as much of the taxpayer's activities as may be subject to the Municipality's taxing authority. (Passed 9-14-09. Section 711.04 (c) retail rate amended November 28, 2022)