
PART SEVEN — BUSINESS AND TAXATION CODE

ARTICLE 735 Business and Occupation Tax

- 735.01 Short title.
- 735.02 Purpose and intent.
- 735.03 Definitions.
- 735.04 Imposition of tax.
- 735.05 Natural resource production.
- 735.06 Manufacturing.
- 735.07 Selling tangible property.
- 735.08 Public service or utility business.
- 735.09 Contracting.
- 735.10 Amusements.
- 735.11 Service business or calling not otherwise classified.
- 735.12 Rentals and royalties.
- 735.13 Banking and other financial businesses.
- 735.14 Health maintenance organizations.
- 735.15 Internet sales.
- 735.16 Additional credits.
- 735.17 Exempt activities.
- 735.18 Tax cumulative.
- 735.19 Administration generally.
- 735.20 Returns: computation and payment of tax.
- 735.21 Taxpayer records.
- 735.22 Tax return information confidentiality.
- 735.23 Erroneous computation of tax.
- 735.24 Investigations.
- 735.25 Assessments.
- 735.26 Notice of assessment; petition for reassessment.
- 735.27 Hearing procedure; decision; review.
- 735.28 Injunction.
- 735.29 Unpaid tax a lien; delinquency notice filing and release.
- 735.30 Successor liability.
- 735.31 Revocation, non-renewal of licenses and permits.
- 735.32 Settlement agreements and compromises.
- 735.33 Additional administrative provisions concerning contracting.
- 735.34 Claims for refunds or credit.
- 735.35 Interest and penalty.
- 735.36 Severability.
- 735.37 Administration.
- 735.38 Tax rate per \$100.00.
- 735.39 Temporary Special Event Vendor License.

CROSS REFERENCES

Business and Occupation Tax, Authority to tax – see WV Code 8-13-5; and WV Leg. Rules, WV Leg. Rules, §110-26

Collection of taxes – see WV Code 8-13-15 *et seq.*

735.01 Short title.

This Article shall be known as the “Harpers Ferry Municipal Business and Occupation Tax

PART SEVEN — BUSINESS AND TAXATION CODE

Ordinance.” (Passed 11-12-2012.)

735.02 Purpose and intent.

The purpose of this Article is to impose a municipal business and occupation tax pursuant to West Virginia Code § 8-13-5 and West Virginia Legislative Rules § 110-26 to the fullest extent allowable under the operative laws of the State of West Virginia and the United States unless a more restrictive application is required by an express limitation set forth in this Article. (Passed 11-12-2012.)

735.03 Definitions.

For purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section unless a different meaning is clearly required by the context in which the term is used:

- (a) **Banking business.** The term “banking business or financial organization” means 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 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.
- (b) **Business.** The term “business” means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct, except for occasional or casual sales of property or services.
- (c) **Contracting.** The term “contracting” means 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. The business of contracting is taxable under the business and occupation tax ordinance, and the gross income derived therefrom must be reported under the contracting classification. The rate of tax applied against gross income under the contracting classification is taxable at the rate specified in Section 735.38 of this Article.
- (d) **Gross income.** The term “gross income” generally 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 interest, discount, rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest and discount paid, or sums paid to independent contractors, subcontractors or persons furnishing services or property used in the operation of any business to produce gross income, or any other expense whatsoever. “Gross income” of a banking or financial business is defined in Section 735.13 of this Article.
- (e) **Gross proceeds of sales.** The term “gross proceeds of sales” means the value actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The terms “gross income” and “gross proceeds of sales” shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers

PART SEVEN — BUSINESS AND TAXATION CODE

when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the gross income or gross proceeds of sales; excise taxes imposed by the State; 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 repayment of a debt of another; and excise taxes imposed by the federal government upon the consumer, not manufacturer, and which are held in trust by the vendor as agent for the Federal Government.

- (f) Municipality. The term “municipality” means the Corporation of Harpers Ferry, West Virginia.
- (g) Occasional or casual sales. “Occasional sale” or “casual sale” shall mean the sale of tangible personal property not held or used by a seller in the course of an activity for which a Town business license is required; including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business; Provided, That such sale or exchange is not one of a series of sales sufficient in number, scope and character to constitute a business activity requiring the holding of a Town business license.
- (h) The term “official” means the municipality’s Mayor and his or her agents, delegates, or representatives as identified by the Mayor.
- (i) Person. The terms “person” and “company” are used interchangeably in this Article and mean and includes any individual, firm, co-partnership, joint adventure, association, corporation, limited liability company, trust, estate or any other group or combination acting as a unit, and the plural as well as the singular number. The word “it” shall also include the pronouns “he” and “she.”
- (j) Prime contractor. The term “prime contractor” means and includes all persons primarily responsible for furnishing work or both materials and work for another in fulfillment of a contract.
- (k) Retail sales. The terms “retail sales” and “selling at retail” mean all sales other than wholesale sales, including but not limited to sales to persons for use in any activity not subject to the tax imposed by this Article, all sales of real property, and sales to consumers.
- (l) Sale. The terms “sale” and “sales” mean any transfer of the ownership of or title to property, whether for money or in exchange for other property.
- (m) Services. The term “service business” or “calling” includes all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the services rendered by an employee to his employer.
- (n) State. The term “state” means the State of West Virginia.
- (o) Subcontractor. The term “subcontractor” means all persons furnishing work or both materials and work to a contractor.
- (p) Tax year. The terms “tax year” and “taxable year” mean either the calendar year or the taxpayer’s fiscal year when permission is obtained in writing from the Mayor to use such fiscal year in lieu of the calendar.
- (q) Taxpayer. The term “taxpayer” means any person liable for any tax hereunder.
- (r) Town. The term “town” means the Corporation of Harpers Ferry, West Virginia.
- (s) Wholesale sales. The terms “selling at wholesale” and “wholesale sales” mean only (1) sales of 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 by the purchaser in the conduct of any business or activity which is subject

PART SEVEN — BUSINESS AND TAXATION CODE

to the tax imposed by this Article, or (3) sales of tangible personal property to the United States of America, its agencies and instrumentalities, or the State of West Virginia, its institutions and political subdivisions. (Passed 11-12-2012.)

735.04 Imposition of tax.

Annual privilege taxes (Business and Occupation Tax) are hereby levied, imposed and shall be collected 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 or gross proceeds as set forth in Sections 735.05 through 735.14 of this Article, inclusive.

If any person liable for any tax under Section 735.05 or 735.06 of this Article shall ship or transport its products, or any part thereof, out of the municipality 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 municipality 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 735.05 or 735.06 of this Article, shall neither be added nor deducted in computing the tax levied under the other Sections of this Article. In determining value, however, as regards 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 interest exists between the buyer and the seller but where the circumstances or conditions are otherwise similar.

The municipal business and occupation tax is imposed on 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 contributes to the establishment and maintenance of a market, such contacts are considered to be sufficient to sustain the municipality's taxing jurisdiction assuming federal constitutional nexus standards are satisfied. (WV Code 8-13-5. Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.) ^[735.04]

735.05 Natural resource production.

Upon every person engaging or continuing within the municipality in the business of severing, extracting, mining, quarrying, reducing to possession and/or producing for sale, profit or commercial use any natural resource products, the amount of such tax shall be equal of 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, one percent (1.00%); limestone or sandstone quarried or mined, one and one-half percent (1.5%); oil or blast furnace slag, three percent (3.0%); natural gas in excess of the value of five thousand dollars (\$5,000.00), six percent (6.0%); sand gravel or other mineral products, not quarried or mined, three percent (3.0%); timber one and one-half percent (1.5%), and other natural resource products, two percent (2.0%).

FOOTNOTE:

735.04 The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate. Ord. 2022-03 (passed 08-08-2022) amended 735.04 to allow for temporary special event vendor licenses. See 735.39.

PART SEVEN — BUSINESS AND TAXATION CODE

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 Section 735.07 of this Article for the privilege of selling such products within the municipality.

A person exercising any privilege taxable 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 sales and pay the tax imposed in Section 735.07 of this Article for the privilege of engaging in the business of selling such natural resource products in the municipality. (Passed 11-12-2012.)

735.06 Manufacturing.

Upon every person engaging or continuing within the municipality 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 part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), the amount of the tax shall be equal to the value of the article, substance, commodity, or newspaper 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 percent (0.30%).

The measure of the tax in this Section is the value of the entire product manufactured, compounded or prepared in the municipality for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the municipality. It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the municipality and partially manufactures, compounds or prepares such products outside the municipality, the measure of tax under this Section shall be that proportion of the sales price of the product that the payroll costs of manufacturing within the municipality bears to the entire payroll costs of manufacturing the product.

If any persons shall ship or transport its products or any part thereof out of the municipality 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 municipality shall be the basis for the assessment of the tax imposed. The Mayor or designated official may prescribe equitable and uniform rules of ascertaining such value; provided that, the absence of such rules, the person manufacturing the products within the municipality shall report the value in a

PART SEVEN — BUSINESS AND TAXATION CODE

consistent and reasonable manner.

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 municipality by such person, shall not be considered manufacturing or compounding or preparing for sale, but the sale of these product shall be reported under Section 735.07 of this Article either as wholesale or retail sale, as the case may be.

Persons who manufacture, compound or prepare products outside the municipality and who make sale of such product within the municipality shall not pay the tax imposed by this Section but shall pay tax imposed by Section 735.07 of this Article for the privilege of selling such product within the municipality.

A person exercising any privilege taxable under this Section and engaging in the business of selling its product in the municipality shall be required to make returns of the gross proceeds of such sales and pay the tax imposed by this Section at the rate set forth in Section 735.07 of this Article for the privilege of engaging in the business of selling such manufactured goods in the municipality. (Passed 11-12-2012.)

735.07 Selling tangible property.

Upon every person engaging or continuing within the municipality 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 and wholesale sales from a rolling stockpile, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds, or other evidence of indebtedness, there is hereby levied, and shall be collected, a tax equal to one-half percent (0.50%) of the gross income of the business; except, therein the case of selling at wholesale, the tax shall be equal to fifteen one-hundredths percent (0.15%) of the gross income of the business.

Gross income or gross proceeds of sales derived from sales within the State that is not taxed or taxable by any other municipality are included in the measure of municipal business and occupation tax if the sales are either directed from a location within the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when the taxpayer has only one office location and this office is located within the municipality and its activities elsewhere in the State are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

Persons domiciled outside the municipality who solicit sales within the municipality and sell tangible personal property within the municipality are doing business in the municipality, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in the municipality and irrespective of how a sales order is transmitted or processed. If an order is placed in connection with solicitation by a representative (regardless whether there is an employment or agency relationship or whether acting as an independent contractor) who solicits orders within the municipality, and the tangible personal property is to be delivered in the municipality, then the gross proceeds of such sales are included in the measure of the tax imposed by this Article. (Passed 11-12-2012.)

PART SEVEN — BUSINESS AND TAXATION CODE

735.08 Public service or utility business.

Upon every person engaging or continuing within the municipality 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 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, four percent (4.0%); electric light and power companies, four percent (4.0%) on sales and demand charges for domestic and commercial lighting and three percent (3.0%) on sales and demand charges for all other purposes; natural gas companies, three percent (3.0%); and upon all other public service or utility business, two percent (2.0%). The measure of this tax shall not include gross income derived from commerce between the State, other states of the United States and foreign countries. The measure of the tax under this Section shall include only gross income received from the supplying of public service. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon such other activity by the appropriate section of this Article. Municipally-owned water companies and municipally-owned electric distribution systems are not subject to the tax imposed under this Section (West Virginia Legislative Regulations §110-26-2d.2). (Passed 11-12-2012.)

735.09 Contracting.

- (a) Upon every person engaging or continuing within the municipality in the business of contracting, the tax shall be equal to two percent (2.0%) of the gross income of the business.
- (b) Prime and subcontractors, taxable on gross income with no deductions therefrom: A prime contractor, one who furnishes work or both materials and work under a written or oral contract, for the construction, alteration, repair, decoration, or for the construction, alteration, repair, decoration or improvement of a new or existing building or structure may take no deduction from gross income on account of payments made to the subcontractor. The subcontractor will also be taxable on his gross income under the contracting classification.
- (c) Contracting entered into with governments: Gross income received by a person for contracting activities performed for the State, the Federal Government, or any of their instrumentalities, agencies, boards, commissions or political subdivisions, etc., is taxable and shall be reported under the contracting classification. The fact that the owner is a governmental unit does not relieve the contractor, subcontractor, suppliers, or any other person from liability for business and occupation tax on the full amount of gross income.
- (d) Prime contractors liable for taxes due from subcontractors: Whenever a contracting, repairing, decorating or improving contract is let for work to be done in the Town, the prime contractor shall submit a list of all subcontractors who will work under the contract to the Harpers Ferry Town Recorder. The list shall be submitted within thirty days of the original contract. The names of any and all subcontractors engaged after the list is submitted shall be submitted as they are engaged. The Recorder or his/her designee shall approve a standard form for the list. Upon completion of the contract, but prior to final payment to the subcontractor or subcontractors, the prime contractor shall notify the Recorder in writing and request a letter of release from the Recorder stating that such subcontractor or subcontractors, as appropriate, have timely filed and paid taxes due the Town. If the Recorder is satisfied that such subcontractor or subcontractors, as appropriate, have timely filed and paid taxes due the Town, he/she shall issue such letter of release forthwith. Nothing herein shall be construed to relieve

PART SEVEN — BUSINESS AND TAXATION CODE

any subcontractor of its liability for taxes due the Town under Section 735.38. (Passed 11-12-2012.)

735.10 Amusements.

Upon every person engaging or continuing with the municipality in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, carnival, circus, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to forty one-hundredths percent (0.40%) of the gross income of the business. (Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.)^[735.10]

735.11 Service business or calling not otherwise classified.

Upon every person engaging or continuing within the municipality in any service business or calling not otherwise specifically taxed under this Article, there is hereby levied, and shall be collected, a tax equal to one percent (1.0%) of the gross income of any such business. Gross income or gross proceeds of sales derived from services within the State that is 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 the State are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality. (Passed 11-12-2012.)

735.12 Rentals and royalties.

Upon every person engaging or continuing within the municipality in the business of furnishing any real or tangible personal property which has a tax situs in the municipality, or any interest therein, for hire, loan, lease or otherwise, whether the return is in the form of rentals, royalties, fees or otherwise, the tax shall be one percent (1.0%) of the gross income of any such activity. The term "tangible personal property," as used herein, shall not include money or public securities. (Passed 11-12-2012.)

735.13 Banking and other financial businesses.

Upon every person engaging or continuing within the municipality in the business of banking or financial business, the tax shall be equal to one percent (1.0%) 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-transients; provided further that all interest derived on activities exempt under (3) above shall be reported, as to amounts, on the return of a person taxable under the provision of this Section. (Passed 11-12-2012.)

FOOTNOTE:

735.10 The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate.

PART SEVEN — BUSINESS AND TAXATION CODE

735.14 Health maintenance organizations.

The rate of tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of West Virginia Code §§33-25A-1 *et seq.* shall not exceed one half of one percent (0.50%) to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the public employee insurance agency pursuant to West Virginia Code §§5-16-1 *et seq.*, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization that is expended for administrative expenses; and shall not exceed one-half of one percent (0.50%) to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the public employees insurance agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: Provided, that this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in the municipality, whether such income is in the form of rentals or royalties. (Passed 11-12-2012.)

735.15 Internet sales.

Sales of tangible personal property by a business located within the Town, ordered through the internet, by mail or by some other form of telecommunication are subject to the Town business and occupation tax if (1) the customer resides in the Town; or (2) if the tangible personal property is to be delivered in West Virginia to a location which does not impose a business and occupation tax; or (3) where the order is placed from anywhere and the tangible property ordered is to be picked up by the customer at a store, warehouse or business located in the Town. However no business and occupation tax may be imposed where the sale is conditioned upon delivery outside West Virginia. (Passed 11-12-2012.)

735.16 Credits.

- (a) A person taxable under Section 735.07 of this Article with respect to selling products at wholesale in this municipality shall be allowed a non-refundable credit against the tax imposed on such wholesale sales pursuant to Section 735.07 for any (1) manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this 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.
- (b) For purposes of this Section:
- (1) "Manufacturing tax" means a gross receipts 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 (i) the tax imposed in Section 735.06 of this Article and (ii) 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 receipts 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 (i) the tax imposed in Section 735.05 of this Article and (ii) similar gross receipts taxes paid to other municipalities or other local government units within the United States (other than State governments) within the United States.
 - (3) "Gross receipts tax" means a tax which (i) is imposed on or measured by the

PART SEVEN — BUSINESS AND TAXATION CODE

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 (ii) which is not pursuant to law or custom, separately stated from the sales price.

- (c) If imposition of the municipality's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a 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 11-12-2012.)

735.17 Exempt activities.

- (a) The provisions of this Article shall not apply to: (1) 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 the municipality, whether such income is in the form of rentals or royalties; (2) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (3) 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 West Virginia Code §§60-7-1 *et seq.*; (4) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (5) production credit associations, organized under the provisions of the Federal Farm Credit Act of 1933; provided, that the exemption of this Section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§19-4-1 *et seq.*; (6) any credit union organized under the West Virginia Code; provided, that the exemptions of this Section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§19-4-1 *et seq.*; (7) gross income derived from advertising service rendered in the business of radio and television broadcasting; (8) gross income of nonprofit homeowners' associations received from assessments on its members for community services including but not limited to road maintenance, common area maintenance, water service, sewage service and security service; (9) persons engaged in the business of horse racing or dog racing, providing they have complied with all the requirements set forth in West Virginia Code §§19-23-1 *et seq.*, but public conveniences such as golf courses or other recreational activities and motel or hotel operations from which persons engaged in horse racing or dog racing derive income, are subject to municipal business or occupation tax; and (10) business development corporations organized in compliance with the provisions of West Virginia Code §§31-14-1 *et seq.*
- (b) Although certain persons engaged within the State in any public service or utility business are taxable on such business and shall report the gross income from such business activities, persons operating the following businesses are exempt from municipal business or occupation tax: railroads, railroad car companies, express companies, pipeline companies, motor carriers, telephone and telegraph companies and water carriers by steamboat or steamship. (Passed 11-12-2012.)

PART SEVEN — BUSINESS AND TAXATION CODE

735.18 Tax cumulative.

The tax, interest and penalty imposed by this Article shall be in addition to all other licenses, taxes and other revenue measures levied or collected by the municipality as a condition precedent to the right of any person to engage or continue in any business, profession, trade, calling or other activity within the municipality. A person exercising a privilege taxable under this Article, subject to the payment of all licenses and charges which are conditions precedent to exercising the privileges taxed, may exercise the privilege in the municipality for the tax year upon the condition that he/she shall pay the tax, interest and penalty imposed by this Article. (Passed 11-12-2012.)

735.19 Administration generally.

The administration of this Article is vested in and shall be exercised by the Mayor who shall prescribe forms and may promulgate from time to time reasonable rules, publications and instructions for the making of returns, and for ascertaining, assessment, collection and administration of tax, interest and penalty imposed hereunder. The Mayor reserves the right to delegate such responsibility to a designated official of the municipality. (WV Code 8-13-15. Passed 11-12-2012.)

735.20 Returns: computation and payment of tax.

The tax levied by this Article shall be due and payable in quarterly installments on or before the expiration of one month from the end of the calendar quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make a return reporting the computation of tax for which it is liable for each quarter; sign and mail or hand-deliver the completed return, together with any remittance due, to the Town Hall, Corporation of Harpers Ferry or as specified by the Mayor. In reporting and remitting the amount of the tax, interest and penalties due for each quarter, the taxpayer may deduct the quarterly credit allowed by Section 735.15 of this Article. The Mayor or his/her official designee may allow return and payment under this Section for periods other than quarterly periods.

On or before thirty-one (31) days after the end of the tax year, each person liable for the payment of tax under this Article shall make a fourth quarter return, showing the gross proceeds of sale or gross income of business, trade, calling or activity, computing the amount of tax, interest and penalty chargeable against the person in accordance with the provisions of this Article and transmit with the return a remittance in the sum required by this Article, covering the remainder of the tax, interest and penalty chargeable against the person for the tax year, to such location or locations specified by the Mayor. Such returns shall be verified by the oath of the taxpayer, if made by an individual, or by the individual designated by a taxpayer that is an entity to take the oath on behalf of the taxpayer.

All remittances and payments of tax, interest and penalty imposed by this Article shall be made to the Corporation of Harpers Ferry in lawful money of the United States or by bank draft, certified check, cashier's check, or other commercially acceptable means specified by the Mayor or designated official, to be kept deposited and accounted for as provided by law. (Passed 11-12-2012.)

735.21 Taxpayer records.

Each person or business subject to this Article shall maintain sufficient records for review by the Mayor or his/her official designee, as long as the contents of such records may be material in the administration of tax imposed by this Article. (Passed 11-12-2012.)

PART SEVEN — BUSINESS AND TAXATION CODE

735.22 Tax return information confidentiality.

- (a) Except when required in an investigation or proceeding to ascertain or collect amount of tax, interest, penalty, refund or credit due, or pursuant to an exemption in West Virginia Code §11-10-5d, it shall be unlawful for any officer, employee or agent of the municipality to divulge or make known in any manner the tax return, or any part thereof, of any person, or disclose information concerning the personal affairs of any individual or the business of any person, 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 Mayor or his/her designee or otherwise obtained by the municipality in an investigation undertaken by the Mayor or his/her designee concerning the tax imposed by this Article. Any person protected by the provisions of this Article may, in writing, waive the confidentiality provisions of this Section for such purpose and such period as he/she shall therein state. 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.
- (b) Notwithstanding the foregoing, the Mayor or his/her designee may permit the proper officer, or his/her authorized representative or agent, of the United States or the State of West Virginia, or any political subdivision of the State, to inspect return information to or may furnish to such officer or representative a copy of any such return or any other tax return information, provided, that such other jurisdiction grants similar privileges to this municipality or if the other jurisdiction is a party of an intergovernmental agreement authorizing the exchange of such information. Further guidance on confidentiality and disclosure of tax information is contained in the municipal ordinance entitled "Reciprocal Exchange of Tax Information." (Passed 11-12-2012.)

735.23 Erroneous computation of tax.

If any taxpayer shall make any error in computing the tax, interest and penalty under this Article, the Mayor or his/her designee shall correct such error or reassess the proper amount of tax, interest and penalty, and notify the taxpayer of his/her action by mailing the taxpayer promptly a copy of the corrected assessment, and any additional tax, interest and penalty for which such taxpayer may be liable shall be paid within fifteen (15) days after the receipt of such statement. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the request of the Mayor or his/her designee and shall be payable out of any funds available for that purpose. The taxpayer may, at its election, apply any overpayment as credit upon tax subsequently accruing hereunder. (Passed 11-12-2012.)

735.24 Investigations.

For the purposes of ascertaining the correctness of a tax return, claim or assessment or for the purpose of making an estimate of any taxpayer's liability for the tax administered under this Article, the Mayor or his/her designee shall have the power to examine or cause to be examined any books, papers, records, memoranda and other documents or data 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 relevant matters. In connection therewith, the Mayor or his/her designee may take testimony and shall have the power to administer oaths.

The Mayor or his/her designee has the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and production of documents for the purpose of

PART SEVEN — BUSINESS AND TAXATION CODE

ascertaining the correctness of a return or claim or for performing an assessment or for any hearing held by the Mayor or his/her designee. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the Mayor or his/her designee may invoke the aid of the Circuit Court of Jefferson County. Upon proper showing, the Mayor or his/her designee may apply for an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question. (Passed 11-12-2012.)

735.25 Assessments.

If any person, who is required by this Article to do so, shall fail or refuse to make a return, either in whole or part, or if the Mayor or his/her designee believes the tax imposed by this Article has been insufficiently returned by any taxpayer, the Mayor or his/her designee may proceed to assess the tax and shall notify the person or business assessed of the amount of the tax, additional tax, interest and penalties so assessed.

The Mayor or his/her designee may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the Mayor or his/her designee ascertains that such assessment is improper or incomplete in any material respect. The Mayor or his/her designee may, at any time within the period prescribed for assessment, make a supplemental assessment whenever the Mayor or his/her designee ascertains that any assessment is incorrect in any material respect.

The amount of tax, interest and penalties imposed by this Article shall be assessed within three (3) years after the date the fourth quarter return for the year in which such tax arose is filed by the taxpayer; 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, an assessment may be made at any time. (Passed 11-12-2012.)

735.26 Notice of assessment; petition for reassessment.

The Mayor or his/her designee shall give the taxpayer written notice of any assessment made pursuant to this Article. Unless the taxpayer to whom the notice of assessment is given shall within thirty (30) days after service thereof file with the Mayor or his/her designee a petition for reassessment, the assessment shall become final and not subject to administrative or judicial review. A petition for reassessment must be in writing verified under oath by the taxpayer or his duly authorized agent having knowledge of the fact, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections. The total amount of an assessment shall be due and payable on the day following the date upon which the assessment becomes final. (Passed 11-12-2012.)

735.27 Hearing procedure; decision; review.

When a petition for reassessment or a petition for refund or credit is properly filed pursuant to this Article within the time prescribed for such filing, the Mayor or his/her designee 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 (20) days in advance thereof. Such hearing shall be held within ninety (90) days from the date of filing the petition, unless continued by agreement of the parties or by the Mayor or his/her designee for sufficient cause.

The hearing shall be informal and shall be conducted in an impartial manner by the Mayor or a hearing examiner designated by the Mayor. The burden of proof shall be upon the taxpayer to show that the assessment or denial refund or credit is incorrect and contrary to law. After such hearing, the Mayor or his/her designee shall, within a reasonable time, give notice

PART SEVEN — BUSINESS AND TAXATION CODE

in writing to the taxpayer of the Mayor's or his/her designee's decision.

An appeal may be taken by the taxpayer to the Circuit Court of Jefferson County within sixty (60) days after service of the Mayor's or his/her designee's administrative decision issued pursuant to this Section. (Passed 11-12-2012.)

735.28 Injunction.

After any delinquency shall have continued sixty (60) days, the Mayor or his/her designee may proceed in the Circuit Court of Jefferson County to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all tax, interest and penalty due under this Article. In any proceeding under this Section, upon judgment or decree for the municipality, the municipality shall be awarded its costs. (Passed 11-12-2012.)

735.29 Unpaid tax a lien; delinquency notice filing and release.

Any tax, interest and penalties due and payable under this Article shall be a debt due the municipality and shall constitute a lien on the real and personal property of the taxpayer. The Mayor or his/her designee, for the more effective collection of the tax, interest and penalty imposed by this Article, may file with the Clerk of the Court, Jefferson County a certified notice of lien for delinquent taxes, interest and penalty under this Article for recordation. If a lien has been recorded respecting a delinquency, upon full payment of all delinquent tax, interest and penalty, the Mayor or his/her designee shall attest to the fact and amount of payment, and shall forward a certificate of release to the taxpayer. Upon presentation and payment of the recording fee by the taxpayer, the Clerk of the Court, Jefferson County shall record such certificate in the book in which releases are recorded. (Passed 11-12-2012.)

735.30 Successor liability.

The tax, interest and penalty imposed by this Article shall be a continuing lien upon the property of any person subject to the provisions hereof who shall sell out its business or stock of goods, or shall quit business, and such person shall be required to make the return provided for in this Article within thirty (30) days after the date it sold out its business or stock of goods, or quit business, and its successor in business shall be required to withhold a sufficient amount of the purchase money to cover the amount of such tax, interest and penalty due and unpaid until such time as the former owner shall produce a receipt from the Mayor or his/her designee showing that all tax, interest and penalty has been paid. If the purchaser of a business or stock of goods fails to withhold purchase money as hereby provided, and the tax, interest and penalty shall be due and unpaid after the thirty-day period allowed, the successor shall be personally liable for the payment of the tax, interest and penalty accrued and unpaid on account of the operation of the business by the former owner. (Passed 11-12-2012.)

735.31 Revocation, non-renewal of licenses and permits.

The Mayor or his/her designee may revoke, deny and prevent any and all licenses and permits issued by the municipality in the event a licensee or permittee fails or refuses to file any return required hereby or fails or refuses to pay any delinquent tax, interest or penalty due and owing to the municipality.

In the event of such a revocation or denial, the Mayor or his/her designee may provide written notice to the affected person at least five (5) days prior to the contemplated revocation or denial and such notice shall be served by certified mail. The notice shall indicate the time and the place of a revocation/denial review meeting, the general grounds of said

PART SEVEN — BUSINESS AND TAXATION CODE

contemplated action, and shall advise the affected person of its rights to appear at said hearing in person and represented by legal counsel, and to be heard orally upon the merits of the person's defense. The Mayor or his/her designee may request legal advice from the Harpers Ferry Town Attorney, and adopt such procedures for its decorum and the dispatch of business at such hearing as the Mayor or his/her designee may regard advisable. The revocation decision of the Mayor or his/her designee will be final.

Each license or permit that has been revoked or denied pursuant to this Section may be issued or re-issued upon payment of all delinquent tax, interest or penalty due and owing to the municipality and satisfaction of all relevant licensing conditions otherwise imposed by the municipality. (Passed 11-12-2012.)

735.32 Settlement agreements and compromises.

The Mayor or his/her designee, with approval of the Town Council, is authorized to enter into an agreement in writing with any person relating to the liability of such person in respect of the tax, interest and penalty imposed by this Article for any taxable period. If such a closing agreement is duly made and entered into, such agreement shall be final and conclusive for the periods covered except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The Mayor or his/her designee, with approval of the Town Council, may compromise all or part of any administrative determination or civil case concerning tax, interest and penalty or otherwise arising under the provisions of this Article. (Passed 11-12-2012.)

735.33 Additional administrative provisions concerning contracting.

Without limiting the generality of the administrative and collection powers granted to the Mayor or his/her designee in this Article, the Mayor or his/her designee is also empowered to require any person engaging or continuing with the municipality in the business of contracting to furnish a list of the names, addresses and amounts paid by them to any subcontractors employed and suppliers of material used upon any job or to do any work within the municipality. The Mayor or his/her designee may also require every person engaging or continuing within the municipality in the business of contracting who is a nonresident of the State of West Virginia to pay or guarantee the payment of the amount of the tax imposed by this Article for the privilege of engaging in the business of contracting within the municipality, such payment of such tax to be based upon the amount of the building permit issued by the municipality for the work to be performed by such person, as a condition precedent to the issuance of such building permit. In lieu of such prior payment in cash of such tax any such nonresident may guarantee the payment of such privilege tax provided for herein by delivering to the municipality a bond, with good and adequate surety, payable to the municipality, and conditioned to pay such tax on or before the estimated date of the completion of the work to be performed by such person within the municipality. (Passed 11-12-2012.)

735.34 Claims for refund or credit.

Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this Article shall file its claim with the Mayor or his/her designee within three (3) years after the due date of the return in respect of which the tax was imposed, and not thereafter.

If, as a result of the claim, the Mayor or his/her designee shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, the Mayor or his/her designee shall refund the same to the taxpayer. If the Mayor or his/her designee denies the claim, the

PART SEVEN — BUSINESS AND TAXATION CODE

taxpayer may within thirty (30) days after notice of denial file with the Mayor or his/her designee a petition for refund or credit, which shall be heard in accordance with Section 735.27 of this Article. A taxpayer's failure to abide by express procedures contained in this Section precludes taxpayer's right to any refund or credit of tax, interest and penalties paid or collected under this Article. (Passed 11-12-2012.)

735.35 Interest and penalty.

The tax imposed by this Article, if not paid when due, shall bear interest at the rate of eight percent (8.00%) per annum from the due date of the payment until paid.

If any person fails to make the return or any quarterly installment required by this Article, or makes its 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 (5.00%) percent of the tax for the first month, or fraction thereof, of delinquency, and one (1.00%) percent of the tax for each succeeding month, or fraction thereof of delinquency provided, that if such failure is due to reasonable cause, the Mayor or his/her designee may waive, in whole or in part, these penalties. Additionally, if the failure to pay is due to fraud or intent to evade any such tax there shall be added an additional penalty of twenty-five (25.00%) percent of the tax owed, exclusive of penalties.

Interest and penalties may be collected in the same manner as the tax imposed by this Article. (Passed 11-12-2012.)

735.36 Severability.

If any provision of this Article is held unconstitutional or invalid, on its face or as applied, the remaining provisions of this Article shall remain in full force and effect; and to this end, the provisions of this Article are declared to be severable. (Passed 11-12-2012.)

735.37 Administration.

The administration of this ordinance is vested in and shall be exercised by the Mayor or his/her designee who shall prescribe forms and reasonable rules in conformity with this ordinance 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 ordinance in any of the courts of the State. Without limiting the generality of the foregoing and notwithstanding any provision herein to the contrary, the Mayor or his/her designee may execute and deliver binding agreements with other municipalities to carry out the provisions of this ordinance respecting cooperation and tax administration, including sourcing of gross income for municipal business and occupation tax purposes, may execute and deliver binding agreements with the West Virginia State Tax Commissioner respecting the exchange of taxpayer information as set forth in Section 735.22 of this Article and Town Ordinance titled "Reciprocal Exchange of Tax Information Agreement" and may execute and deliver settlement agreements as set forth in Section 735.32. (WV Code 8-13-15. Passed 11-12-2012.)

735.38 Tax rate per \$100.00.

<i>Production</i> (§11-13-2a)	
Coal	1.00
Limestone or sandstone quarried or mined	1.50
Oil, blast furnace slag	3.00

PART SEVEN — BUSINESS AND TAXATION CODE

Natural gas in excess of \$5,000	6.00
Sand & gravel (not mined or quarried)	3.00
Timber	1.50
Other natural resource products	2.00
<i>Manufacturing</i> (§11-13-2b)	0.30
<i>Business of selling tangible property</i> (§11-13-2c)	
Retailers	0.50
Wholesalers	0.15
<i>Public service or utility business</i> (§11-13-2d)	
Electric light and power companies (sales and demand charges, domestic purposes and commercial lighting)	4.00
Electric light and power companies (all other sales and demand charges)	3.00
Natural gas companies	3.00
Other public service or utility business (not telephone or telegraph)	2.00
<i>Contracting</i> (§11-13-2e)	2.00
<i>Amusements</i> (§11-13-2g)	0.40
<i>Service business or calling</i> (§11-13-2h)	1.00
<i>Rentals, royalties, fees or otherwise</i> (§11-13-2i)	1.00
<i>Small loan and industrial loan businesses</i> (§11-13-2j)	1.00
<i>Banking and other financial business</i> (§11-13-2k)	1.00

(Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.) ^[735.38]

735.39 Temporary Special Event Vendor License.

- (a) A Temporary Special Event is an event sponsored by a governmental, charitable, community, or for-profit organization which has been approved as a special event by the Town Council, or by the Mayor and / or his or her designee.
- (b) All vendors who do not have a permanent Harpers Ferry business license and are registered with the sponsoring organizations must obtain a Temporary Special Event Vendor License, which license is valid for a 72-hour period for sales. Vendors that have a current Town business license are exempt from the requirement to obtain a Temporary Special Event Vendor License.
- (c) Vendors may only obtain a Temporary Special Event Vendor License for four Temporary Special Events in any calendar year.
- (d) The fee for the Temporary Special Event Vendor License is \$10.00, per vendor, per event.
- (e) Vendors that are required to obtain a Temporary Special Event Vendor License are exempt from municipal Business and Occupation Tax for sales made during the Temporary Special Event. State and municipal sales and use taxes are still applicable. (Ord. 2022-03, passed 08-08-2022.)

FOOTNOTE:

735.38 The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate.
