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## PART SEVEN — BUSINESS AND TAXATION CODE

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### ARTICLE 753 Room Occupancy Tax

- 753.01 Purpose.**
- 753.02 Definitions.**
- 753.03 Levy of tax.**
- 753.04 Rate of tax.**
- 753.05 Duties and procedures for hotel operators.**
- 753.06 Administration.**
- 753.99 Penalty.**

#### CROSS REFERENCES

Authority to tax—see WV Code 7-18

#### **753.01 Purpose.**

The purpose of this article is to levy an occupancy tax on hotel rooms located in the incorporated areas of the Corporation of Harpers Ferry for the following purposes:

- (a) At least fifty percent (50%) of the net revenue received during the fiscal year by the Corporation, pursuant to requirements of the Code shall be transmitted for the purpose of promotion of conventions and tourism to any convention and visitor's bureau located within Jefferson County and if there be no convention and visitor's bureau located within Jefferson County, then the percentage appropriation required by this subsection shall be appropriated as follows:
  - (1) Any hotel located within this Municipality may apply to this Municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to this Municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent (75%) of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection; provided, that prior to the appropriating of any moneys to such hotels this Municipality shall require submission of, and give approval to, a budget setting forth the proposed uses of such moneys.
  - (2) The balance of the net revenue required to be expended by this section shall be appropriated to the regional travel council serving the area in which the Municipality is located.
- (b) The remaining portion of the net revenue receivable during the fiscal year by the Corporation may be expended for one or more of the following purposes:
  - (1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;
  - (2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;
  - (3) The promotion of conventions;
  - (4) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition); or
  - (5) The promotion of the arts;
  - (6) Historic sites;

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## PART SEVEN — BUSINESS AND TAXATION CODE

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- (7) Beautification projects;
- (8) Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations in the State of West Virginia;
- (9) Medical care and emergency services, in an amount not exceeding two hundred thousand dollars, in any county where:
  - A. There is an urgent necessity to preserve the delivery of acute medical care and emergency services;
  - B. There is an increase in need for acute medical care and emergency services directly related to tourism;
  - C. Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care and emergency services;
  - D. There is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care and emergency services;
  - E. There is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the census of the year one thousand nine hundred ninety;
  - F. There is one and only one hospital within the county; and
  - G. The county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist; or
- (10) Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the Hatfield-McCoy Regional Recreation Authority. (Passed 06-11-2001. Amended 02-11-2013.)

### **753.02 Definitions.**

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

- (a) "Consideration paid" or "consideration" means the amount received in money, credits, property, or other consideration for or in exchange for the right to occupy a hotel room as herein defined.
- (b) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. (The term "consumer" shall not be constructed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivisions thereof.)
- (c) "Convention and / or Visitor's Bureau" shall be any convention and visitor's bureau formed for the promotion of conventions and tourism within this Corporation or within Jefferson County and approved by resolution of Council.
- (d) "Convention center" means a convention facility owned by state, county, municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.
- (e) "Corporation" means the Corporation of Harpers Ferry.
- (f) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the Corporation of payment of any tax which there is a known legal duty to pay.
- (g) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the Corporation.
- (h) "Fiscal year" means the year beginning July 1, and ending June 30, of the next calendar year.

## PART SEVEN — BUSINESS AND TAXATION CODE

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- (i) “Hotel” means any facility, building or buildings, publicly or privately owned (including a facility located in a state, county, or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term “hotel” shall include state, county and municipal parks offering accommodations as herein set forth. The term “hotel” shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit or any facility providing fewer than three sleeping rooms in private homes, not exceeding a total of ten days in a calendar year, nor any tent, trailer or camper campsites; provided, that where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term “hotel” shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.
- (j) “Hotel operator” means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purpose of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (k) “Hotel room” means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term “hotel room” shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.
- (l) “Net proceeds” means the gross amount of tax collections less the amount of tax lawfully refunded.
- (m) “Person” means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organizations, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.
- (n) “Promotion of the arts” means activity to promote public appreciation of music of all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.
- (o) “Recreational facilities” means and includes any public park, parkway, playground, public recreation center, athletic field, sports area, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by the Corporation.
- (p) “Tax”, “taxes”, or “this tax” means the hotel occupancy tax authorized by this article.
- (q) “Taxing authority” means the Corporation of Harpers Ferry.
- (r) “Taxpayer” means any person liable for the tax authorized by this article.
- (s) “Willfully” means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this article, in the respect of which the violation occurs; provided, that the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant has had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.  
(Passed 06-11-2001. Amended 02-11-2013.)

### 753.03 Levy of tax.

## PART SEVEN — BUSINESS AND TAXATION CODE

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There is hereby levied a Corporation hotel tax, as hereinafter described upon all hotels located within the incorporated limits of the Corporation including any hotels owned by the state or by any political subdivision of this State. The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room. (Provided, however, the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days.) (Passed 06-11-2001.)

### **753.04 Rate of tax.**

The rate of tax imposed shall be five per cent (5%) if the consideration is paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under West Virginia Code 11-15 or charges for meals, valet service, room service, telephone service or other charges or consideration not for use or occupancy of a hotel room. (Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.) <sup>[753.04]</sup>

### **753.05 Duties and procedures for hotel operators.**

- (a) Consumer to pay tax: Hotel or hotel operator not to represent that it will absorb tax: Accounting by hotel.
- (1) The consumer shall pay to the hotel operator the amount of tax imposed by the Corporation, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the Corporation, all taxes paid by consumers. The hotel operator may commingle tax collected hereunder with the proceeds of the rental of hotel accommodations. The Corporation claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the State for moneys held by the hotel pursuant to the provisions of West Virginia Code 11-15. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.
  - (2) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.
- (b) Occupancy billed to government agencies or employees.
- (1) Hotel room occupancy billed directly to the federal government shall be exempt from this tax; provided, that rooms paid for by the federal government employee for which reimbursement is made shall be subject to this tax.
  - (2) Hotel room occupancy billed directly to this State or its political subdivision shall be exempt from this tax; provided, that rooms paid for by an employee of this State for which reimbursement is made shall be subject to this tax.
- (c) Collection of tax when sale on credit. A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty days thereafter.
- (d) Receivership bankruptcy: Priority tax. In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this article shall be paid from first money available for distribution in priority to all claims and liens except taxes and debts due to the United States which under federal law are given priority over the debts and liens created by

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#### **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.

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## PART SEVEN — BUSINESS AND TAXATION CODE

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municipal ordinance or order of the County Commission for this tax and taxes and debts due to the State of West Virginia. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

- (e) Failure to collect or remit tax: Liability of hotel operator. If any hotel operator fails to collect the tax authorized by this article and levied pursuant to this article or shall fail to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit; provided, that such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can by good and substantial evidence prove the refusal of the purchaser to pay his tax despite the diligent effort in good faith of the hotel operator to collect the tax.
- (f) Total amount collected to be remitted. No profit shall accrue to any person as a result of the collection of the tax authorized under this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in the excess of the amount for which a consumer would be liable by the application of the levy of three percent (3%) for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.
- (g) Tax return and payment.
  - (1) The tax authorized by this article shall be due and payable in quarterly installments on or before the fifteenth day of the calendar month next succeeding the quarter in which the tax accrued; provided that the credit in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for the purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon expiration of the thirty day payment period set forth in subsection (c) hereof, whichever shall first occur. The hotel operator shall, on or before the fifteenth day of each quarter prepare and deliver to the Treasurer of the Corporation of Harpers Ferry a return for the preceding quarter, in the form prescribed by Council. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax the Corporation may require. A remittance for the amount of tax due shall accompany each return. Each return shall be signed by the hotel agent.
  - (2) For the first quarter that the tax is delinquent, there shall be assessed by the Treasurer a penalty in the amount of five percent (5%) of the tax due for the delinquent period. For each additional quarter that the tax remains delinquent there shall be further assessed an additional one percent (1%) penalty per quarter until the tax is paid. No payment for a subsequent period shall be collected until all prior delinquent taxes have been paid in full with all penalties assessed thereto.
- (h) Special rule for taxes due in amounts less than \$30.00 per quarter. In the event that the tax due for any reporting period is less than thirty dollars (\$30.00), the reporting requirements as stated under subsection (g) hereof are hereby waived and no reporting shall be required until such tax liability exceeds thirty dollars (\$30.00).
- (i) Keeping and preserving records. Each hotel operator shall keep complete and accurate records of taxable sales and charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years, unless the taxing authority shall

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## PART SEVEN — BUSINESS AND TAXATION CODE

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consent in writing to their destruction within the period or shall require that they be kept for a longer period.

- (j) Liability of officers. If the taxpayer is an association or corporation, the officer thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines additions to the tax penalties which may be imposed by State law. Corporation ordinances, order of the County Commission or other authority may be enforced against such officers as against the association or corporation which they represent. (Passed 06-11-2001. Amended 02-11-2013.)

### **753.06 Administration.**

- (a) General procedure and administration. The administrative procedure for the assessment, collection and refund of the tax authorized by this article shall be established by the Corporation to aid in the efficient administration of the tax and distribution of its proceeds.
- (b) Proceeds of tax; application of proceeds. The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the General Revenue Fund of the Corporation and after appropriation thereof shall be expended only as provided in Section 753.01 (a) and (b). (Passed 06-11-2001.)

### **753.99 Penalty.**

- (a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority, or to willfully evade the payment of the tax, or any part thereof; or for any person to willfully aid or abet another in any attempt to evade the payment of the tax, or for any officer, partner or principal of any corporation or association to willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this article, with the intent to evade the payment of this tax.
- (b) Any person willfully violating any of the provisions of this article shall for the first offense be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for a period of not more than thirty days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisoned in the penitentiary not less than one nor more than three years, or in the discretion of the Court be confined in the county jail not more than one year, or both fined and imprisoned.
- (c) Every prosecution for any offense arising under this ordinance shall be commenced within three years after the offense was committed, notwithstanding any provisions of this article to the contrary.
- (d) Proceedings against any person under this section shall be initiated in the county of this State wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence, than in the county where the offense was committed. (Passed 06-11-2001. Amended 02-11-2013.)