

## HOTEL OCCUPANCY TAX

An Ordinance establishing a room occupancy tax on hotels located within the unincorporated areas of Marshall County, West Virginia; establishing procedures for the collection and administration of such tax and establishing penalties for failure to comply with the requirements or provisions of this ordinance.

### ARTICLE I – GENERAL PROVISIONS

#### Section 1.1 – Authority

This ordinance is adopted by the County Commission of Marshall County in accordance with provisions of Article 18, Chapter 7 of the Code of West Virginia, as amended.

#### Section 1.2 – Purpose

The purpose of this ordinance is to impose and collect a privilege tax upon the occupancy of hotel rooms located in the unincorporated area of Marshall County.

### ARTICLE II – DEFINITIONS

#### Section 2.1

For the purpose of this ordinance:

- (a) "Code" means the West Virginia Code of 1931, as amended.
- (b) "Consideration paid" or "consideration" means that amount received in money, credits, property, or other consideration for or in exchange for the right to occupy a hotel room as herein defined.
- (c) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" shall not be construed 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 subdivision thereof.
- (d) "County" means the County of Marshall
- (e) "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, lodges, cabins, and tourist homes. The term "hotel" shall include state, county, and city 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 hotel rooms, 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.
- (f) "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 or any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (g) "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 an banquet room, meeting room, or any other room not primarily used for, or in conjunction with, sleeping accommodations.

- (h) “Person” means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation guardian, trust, business trust, trustee, committee, estate, executor, administrator, or any other group or combination acting as a unit.
- (i) “State” means the State of West Virginia
- (j) “State park” means any state-owned facility which is part of this State’s park and recreation system established pursuant to the West Virginia Code of 1931, as amended. For purposes of this ordinance, any recreational facility otherwise qualifying as a “hotel” and situated within a State park shall be deemed to be solely within the county in which the building or buildings comprising said facility are physically situated, notwithstanding the fact that the State park within which said facility is located may lie within the jurisdiction of more than one county.
- (k) “Tax”, “taxes” or “this tax” means the hotel occupancy tax authorized by this ordinance.
- (l) “Taxing Authority” – means the County of Marshall.
- (m) “Taxpayer” – means any person liable for the tax authorized by this ordinance.

#### ARTICLE III – INCORPORATION OF TAX

##### Section 3.1 – Levy of Tax

There is hereby levied a County hotel occupancy tax, as hereinafter described, upon all hotels located within the unincorporated limits of Marshall County, including any hotels owned by the State or by the 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, the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days: Provided, further, that the tax collected by a hotel owned by a municipality but located outside the corporate limits of such municipality pursuant to this ordinance shall be remitted to the municipality owning such hotel for expenditure pursuant to Section Fourteen, Article Eighteen, Chapter Seven of the Code of West Virginia.

##### Section 3.2 – Rate of Tax

The rate of tax imposed shall be six (6) percent of the consideration paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under Article 15, Chapter 11 of the Code or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.

#### ARTICLE IV – DUTIES AND PROCEDURES FOR HOTEL OPERATORS

Section 4.1 – Consumer to Pay Tax: Hotel Operator not to Represent That it Will Absorb Tax: Accounting by Hotel

- (a) The consumer shall pay to the hotel operator the amount of tax imposed by the County, 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 County, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this ordinance on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle tax collected hereunder with the proceeds of the rental of hotel accommodations. The County’s 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 Article 15, Chapter 11 of the Code. All taxes collected pursuant to the provisions of this ordinance shall be deemed to be held in trust by the hotel until the same shall have been remitted to the County as hereinafter provided.

(b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that 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.

#### Section 4.2 – Occupancy Billed to Government Agencies Or Employees

- (a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax: Provided, that rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.
- (b) Hotel room occupancy billed directly to this State or its political subdivisions 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.

#### Section 4.3 – 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 (30) days thereafter.

#### Section 4.4 – Receivership Bankruptcy; Priority of Tax; Liability for Failure to Pay 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 ordinance shall be paid from the 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 order of the County Commission for this tax and taxes and debts to the State. 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 taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

#### Section 4.5 – Failure To Collect OR Remit Tax: Liability of Hotel Operator

If any hotel operator fails to collect the tax authorized by this ordinance and levied pursuant to order of the County Commission or shall fail to properly remit such tax to the County, 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 this tax despite the diligent effort in good faith of the hotel operator to collect the tax.

#### Section 4.6 – 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 ordinance. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy of six (6) percent 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.

#### Section 4.7 – Tax Return And Payment

(a) The tax authorized by this ordinance shall be due and payable in monthly installments on or before the fifteenth (15<sup>th</sup>) day of the calendar month next succeeding the month in which the tax accrued; Provided, that for credit sales in which the tax authorized by this ordinance is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this ordinance, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the thirty (30) day payment period set forth in Section 4.3 of this ordinance, whichever shall first occur. The hotel operator shall, on or before the fifteenth (15<sup>th</sup>) day of each month, prepare and deliver to the Sheriff/Treasurer of Marshall County a return for the preceding month, in the form prescribed by the taxing authority. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the County may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.

#### Section 4.8 – Keeping And Preserving Of Records

Each hotel operator shall keep complete and accurate records of taxable sales and of 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 consent in writing to their destruction within that period or shall require that they be kept for a longer period.

#### Section 4.9 – Liability of Offices

If the taxpayer is an associate 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 tax or penalties which may be imposed by state law, order of the County Commission or other authority may be enforced against such officers as against the association or corporation with which they represent.

#### ARTICLE V – ADMINISTRATION

##### Section 5.1 – General Procedures And Administration

The Sheriff/Treasurer of Marshall County shall be the County's Chief agent for administration and collection of the tax and shall have the power to distraint property and initiate civil suits for collection of this tax. The County Commission may promulgate such regulations and return forms as may be necessary or desirable for the administration and collection of tax.

(a) Application of proceeds – The net proceeds of the tax collected and remitted to the taxing authority pursuant to this ordinance shall be deposited into the general revenue fund of the County and shall be appropriated in accordance with Section Fourteen, Article Eighteen, Chapter Seven of the Code.

## ARTICLE VI – PENALTIES

### Section 6.1 – Criminal Penalties

- (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 to be made by this ordinance; or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud the 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 any part thereof; or for any officer, partner, or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this ordinance, with the intent to evade the payment of this tax.
- (b) Any person willfully violating any of the provisions of this ordinance shall for the first offense be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for a period of not more than thirty (30) 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 nor more than ten thousand dollars, 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 provision of the Code to the contrary.
- (d) Proceedings against any person under this article shall be initiated in the county of this State wherein such person resides if any element of the offense occurs in such county or residence, or if no element of the offense occurs in such county of residence, then in the county where the offense was committed.
- (e) For purposes of this article, the term:
1. "willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this ordinance, in 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 ordinance requires that the defendant have 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.
  2. "Evade" means to willfully and fraudulently commit any act with the intent of depriving the State of payment of any tax which there is known legal duty to pay.
  3. "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 State.

### Section 6.2 – Civil Penalties

For the first month that the tax is delinquent, there shall be assessed by the Sheriff/Treasurer a penalty in the amount of five (5) percent of the tax due for the delinquent period. For each additional month that the tax remains delinquent, there shall be further assessed an additional one (1)

percent penalty per month 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.

ARTICLE VII – SEVERABILITY

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

ARTICLE VIII – ENACTMENT

Section 8.1 – Effective Date

This ordinance shall take effect on September 1, 2013.

Dated this the 30<sup>th</sup> day of July, 2013.

Donald K. Mason

Donald K. Mason, President

Brian Schambach

Brian Schambach

Robert D. Miller, Jr. 7/30-2013

Robert Miller, Jr.