

Ordinance #7
BUSINESS AND OCCUPATION TAX ORDINANCE

TABLE OF SECTION HEADINGS

1. Short Title
2. Purpose and Intent
3. Definitions
4. Imposition of Tax
5. Natural Resource Production
6. Manufacturing
7. Selling Tangible Property
8. Public Service or Utility Business
9. Contracting
10. Amusements
11. Service Business or Calling Not Otherwise Classified
12. Rentals and Royalties
13. Banking and Other Financial Businesses
14. Health Maintenance Organizations
15. Quarterly Credit
16. Additional Credits
17. Exempt Activities
18. Tax Cumulative
19. Administration Generally
20. Returns; Computation and Payment of Tax
21. Taxpayer Records
22. Tax Return Information Confidentiality
23. Erroneous Computation of Tax
24. Investigations
25. Assessments
26. Notice of Assessment; Petition for Reassessment
27. Hearing Procedure; Decision; Review
28. Injunction
29. Unpaid Tax a Lien; Delinquency Notice Filing and Release
30. Successor Liability
31. Revocation, Non-renewal of Licenses and Permits
32. Settlement Agreements and Compromises
33. Additional Administrative Provisions Concerning Contracting
34. Claims for Refund or Credit
35. Interest and Penalty
36. Severability
37. Effective Date

§1. Short Title

This article shall be known as the "Village of Beech Bottom municipal business and occupation tax ordinance."

§ 2. 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 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.

§ 3. 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:

3.1 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 consists of dividends, interest and other charges derived from the use of money or credit.

3.2 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 or indirect. The production of raw materials or manufactured products which are used or consumed in the main business shall be deemed a business engaged in taxable in the class for which it falls.

3.3 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.

3.4 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 specified in section 13 of this article.

3.5 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 words "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 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.

3.6 Municipality. The term "municipality" means the Village of Beech Bottom

3.7 Village Administration. The term "Village Administration" means the municipality's duly elected Mayor, and duly appointed Treasurer and/or their respective agents, delegates or representatives.

3.8 Person. The terms "person" and "company" are used interchangeably in this article and mean and include any individual, firm, copartnership, 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".

3.9 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.

3.10 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.

3.11 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.

3.12 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 Village Administration to use such fiscal year in lieu of the calendar year.

3.13 Taxpayer. The term "taxpayer" means any person liable for any tax hereunder.

3.14 Wholesale sales. The terms "selling at wholesale" and "wholesale sales" mean only (a) sales of tangible personal property for the purpose of resale in the form of tangible personal property, (b) 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 to the tax imposed by this article, or (c) sales of tangible personal property to the United States of America, its agencies and instrumentalities, or to the State of West Virginia, its institutions and political subdivisions.

§ 4. Imposition of Tax

There are hereby levied and imposed and shall be collected annual privilege taxes, against the persons, on account of the business and other activities and in the amounts to be determined by the application of rates against values or gross income or gross proceeds as set forth in sections 5 through 14 of this article, inclusive. If any person liable for any tax under section 5 or 6 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 5 or 6 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.

§ 5. 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 (1.50%); oil or blast furnace slag, three percent (3.00%); natural gas in excess of the value of five thousand dollars (\$5,000.00), six percent (6.00%); sand gravel or other mineral products, not quarried or mined, three percent (3.00%); timber one and one-half percent (1.50%), and other natural resource products, two percent (2.00%). 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 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 7 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 7 of this article for the privilege of engaging in the business of selling such natural resource products in the municipality.

§ 6. 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 person shall ship or transport its products or any part thereof out of the state 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 state shall be the basis for the assessment of the tax imposed. The Village Administration may prescribe equitable and uniform rules of ascertaining such value; provided that, in the absence of such rules, the person manufacturing the products within the municipality shall report the value in a 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 products shall be reported under section 7 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 7 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 7 of this article for the privilege of engaging in the business of selling such manufactured goods in the municipality.

§ 7. 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 of one 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 West Virginia 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 (1) office location and this office is located within the municipality and its activities elsewhere in West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality. 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.

§ 8. 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 not subsidiaries of the Village of Beech Bottom, four percent (4.00%); electric light and power companies, four percent (4.00%) on sales and demand charges for domestic and commercial lighting and three percent (3.00%) on sales and demand charges for all other purposes; natural gas companies, three percent (3.00%); and upon all other public service or utility business, two percent (2.00%). The measure of this tax shall not include gross income derived from commerce between the state and other states of the United States. 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.

§ 9. Contracting

Upon every person engaging or continuing within the municipality in the business of contracting, the tax shall be equal to two percent (2.00%) of the gross income of the business.

§ 10. Amusements

Upon every person engaging or continuing within 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 one-half of one percent (0.50%) of the gross income of the business.

§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 (1.00%) of the gross income of any such business. Gross income or gross proceeds of sales derived from services within West Virginia 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 West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

§ 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 (1.00%) of the gross income of any such activity. The term "tangible personal property", as used herein, shall not include money or public securities.

§ 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 (1.00%) 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 (a) interest received on the obligations of the United States, its agencies and instrumentalities; (b) 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 (c) interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients; provided further, that all interest derived on activities exempt under (c) above shall be reported, as to amounts, on the return of a person taxable under the provision of this section.

§ 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.

§ 15. Quarterly Credit

There shall be allowed a quarterly exemption of twenty five dollars (\$25.00) in amount of tax computed in cases of contracting as defined in §9 of this ordinance under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a quarter shall be entitled to an exemption of the sum bearing the proportion to twenty five dollars (\$25.00) that the period of time the privilege is exercised bears to a whole quarter. Only one exemption shall be allowed to any one person, regardless whether that person exercises one or more privileges taxable hereunder.

§ 16. Additional Credits

16.1 A person taxable under section 7 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 7 for any (a) manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this municipality, and/or (b) 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.

16.2 For purposes of this section:

- (a) "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 6 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.
- (b) "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 5 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.
- (c) "Gross receipts tax" means a tax which (i) is imposed on or measured by the gross volume of business in terms of gross receipts or in other terms and in the determination of which deductions allowed would not constitute the tax an income tax or value added tax and (ii) which is not, pursuant to law or custom, separately stated from the sales price.

16.3 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.

§ 17. Exempt Activities

The provisions of this article shall not apply to: (a) 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; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) 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.; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) 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.; (f) 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.; and (g) gross income derived from advertising service rendered in the business of radio and television broadcasting.

§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 this 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 this municipality for the tax year upon the condition that he shall pay the tax, interest and penalty imposed by this article.

§19. Administration Generally

The administration of this article is vested in and shall be exercised by the Village Administration 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.

§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 the completed return, together with any remittance due, to the location specified by the Village Administration. 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 15 of this article. The Village Administration 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 Village Administration. 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 Village Administration, in lawful money of the United States or by bank draft, certified check, cashier's check, or other commercially acceptable means specified by the Village Administration, to be kept, deposited and accounted for as provided by law.

§ 21. Taxpayer Records

Each person subject to this article shall maintain sufficient records for review by the Village Administration as long as the contents of such records may be material in the administration of tax imposed by this article.

§ 22. Tax Return Information Confidentiality

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 W. Va. 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 Village Administration or otherwise obtained by the municipality in an investigation undertaken by the Village Administration 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 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.

Notwithstanding the foregoing, the Village Administration may permit the proper officer, or his authorized representative or agent, of the United States or the state, or any political subdivision

of the state, to inspect return information 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.

§ 23. Erroneous Computation of Tax

If any taxpayer shall make any error in computing the tax, interest and penalty under this article, the Village Administration shall correct such error or reassess the proper amount of tax, interest and penalty, and notify the taxpayer of his or 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 Village Administration and shall be payable out of any funds available for the purpose. The taxpayer may, at its election, apply an overpayment as credit upon tax subsequently accruing hereunder.

§ 24. Investigations

For the purpose 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 Village Administration 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 Village Administration may take testimony and shall have the power to administer oaths. The Village Administration has the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and production of documents for the purpose of ascertaining the correctness of a return or claim or for performing an assessment or for any hearing held by the Village Administration. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the Village Administration may invoke the aid of the municipal court of the Village of Beech Bottom and/or the circuit court of Brooke County. Upon proper showing, the Village Administration may apply for an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question.

§ 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 Village Administration believes the tax imposed by this article has been insufficiently returned by any taxpayer, the Village Administration may proceed to assess the tax and shall notify the person assessed of the amount of the tax, additional tax, interest and penalties so assessed. The Village Administration may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the Village Administration ascertains that such assessment is improper or incomplete in any material respect. The Village Administration may, at any time within the period prescribed for assessment, make a supplemental assessment whenever the Village Administration 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.

§ 26. Notice of Assessment; Petition for Reassessment

The Village Administration 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 Village Administration 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 facts, 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.

§ 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 Village Administration 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 Village Administration for sufficient cause. The hearing shall be informal and shall be conducted in an impartial manner by the Village Administration or a hearing examiner designated by the Village Administration. 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, in whole or in part. After such hearing, the Village Administration shall, within a reasonable time, give notice in writing to the taxpayer of the Village Administration's decision. An appeal may be taken by the taxpayer to the court of appropriate jurisdiction within sixty (60) days after service of the Village Administration's administrative decision issued pursuant to this section.

§ 28. Injunction

After any delinquency shall have continued sixty (60) days, the Village Administration may proceed in the Municipal Court of the Village of Beech Bottom, or the Circuit Court of Brooke 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.

§ 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 Village Administration, for the more effective collection of the tax, interest and penalty imposed by this article, may file with the Clerk of the Brooke County Commission 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 Village Administration shall attest to the fact and amount of payment, and shall forward a certificate of release to the taxpayer. Upon presentment and payment of the recording fee by the

taxpayer, the Clerk of the Brooke County Commission shall record such certificate in the book in which releases are recorded.

§ 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 Village Administration 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.

§ 31. Revocation, Non-renewal of Licenses and Permits

The Village Administration has the authority to 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 Village Administration will 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 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 Village Administration may request legal advice from the Village Solicitor, and adopt such procedures for its decorum and the dispatch of business at such hearings as the Village Administration may regard advisable. The revocation decision of the Village Administration 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.

§ 32. Settlement Agreements and Compromises

The Village Administration, with approval of the Village Common 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 Village Administration, with approval of the Village Common 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.

§ 33. Additional Administrative Provisions Concerning Contracting

Without limiting the generality of the administrative and collection powers granted to the Village Administration in this article, the Village Administration is also empowered to require any person engaging or continuing within 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 materials used upon any job or to do any work within the municipality. The Village Administration may also require every person engaging or continuing within the municipality in the business of contracting who is a nonresident of the State 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. Any person engaging a contractor or subcontractor within this municipality shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the Village Administration to the effect that all taxes levied and accrued under this article against the contractor have been paid. If any person fails to withhold as provided herein and the contractor or subcontractor fails to timely pay such tax, such person shall be personally liable for the payment of such taxes, and the same shall be recoverable by the Village Administration by appropriate legal proceedings.

§ 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 Village Administration 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 Village Administration shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, the Village Administration shall refund the same to the taxpayer. If the Village Administration denies the claim, the taxpayer may within thirty (30) days after notice of denial file with the Village Administration a petition for refund or credit, which shall be heard in accordance with section 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.

§ 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%) of the tax for each succeeding month, or fraction thereof of delinquency provided, that if such failure is due to reasonable cause, the Village Administration with the approval of the Village Common Council may waive, in whole or in part, these penalties. Any discussion of such waiver with the Village Common Council may take place in executive session. 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%) of the tax owed, exclusive of penalties. Interest and penalties may be collected in the same manner as the tax imposed by this article.

§ 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.

§37. Effective Date

The tax imposed by this article shall first accrue January 1, 2018