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Chapter Four

Licenses and Business Taxes

Article One

General Business License

4-101. Definitions.

For the purposes of this chapter, the term "person" shall include any group or combination acting as a unit, individual, committee, guardian, trustee, executor, administrator, partnership, copartnership, joint adventure, association, tFuSt, firm or corporation, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

4-102. General business tax levied.

No person shall, without a general business license certificate, engage in or prosecute, within the Town of Sutton, any business, profession, calling, vocation, activity, or trade without first obtaining a business license from the Town of Sutton. The general business license tax levied shall be established based upon the standards and guidelines established by the West Virginia State Tax Commissioner for each location a person holds himself out to engage in or transact business therefrom.

(Section amended 1989)

4-103. Conditions precedent to doing business.

Each of the following conditions shall be fulfilled precedent to the transaction of any business activity for which a town business license is required:

(a) Payment in full of the proper tax or fee as required by the town;

(b) Display or evidence of possession of a business franchise certificate or other form of license from the State of West Virginia authorizing said person to do business within the state;

(c) Display or evidence of possession of a business

franchise certificate or other form of license from Braxton County, if such be required by the Braxton County Commission, authorizing said person to do business within the county;

(d) Issuance of a town license certificate;

(e) Fulfillment of all terms and conditions of such grant of license.

4-104. Application for and issuance of license; payment of tax and fees;

Recorder to maintain records.

(a) Each applicant for a town license shall make application to the Town Recorder on a form to be provided by the town, and display of state and county certificates shall be made at the time of application.

(b) Upon the payment of the license tax or fee as required in this article, the Town Recorder shall issue the license applied for; provided, that the application is in proper form and that all requirements of state law, this code, and other ordinances and all conditions precedent to the issuance of such license appear to the Town Recorder to have been complied with.

(c) The Town Recorder shall maintain on file all applications for town licenses and a record of each license issued, which shall set forth the name and business address of the licensee, the date of issuance and the term for which issuedr the type of license, and such additional information as may be pertinent to establish that all requirements of law and ordinances have been complied with.

4-105. False statements prohibited.

It shall be unlawful for any person to knowingly make any false statement in any application for a city license, or in any tax return, report or other statement relating to any activity licensed by the town and which is required to be made to any city officer or agency.

4-106. Separate license required for each fixed place of business and each class of business.

Except as may be provided otherwise in this code or other ordinance, any person who, at more than one fixed place of business within the town, engages in or prosecutes any business activity for which a town license is required shall obtain a separate license and pay the prescribed tax or fee therefore for each such fixed place of business and for each such business activity.

4-107. License year; expiration date; annual renewal; minimum tax; proration of tax upon beginning business.

(a) A license year shall begin on the first day of July of each calendar year and shall expire with the expiration of the next ensuing thirtieth day of June, and licenses shall expire at midnight on the last day of June subsequent to the date of issuance and shall be renewable annually, except such as may be provided otherwise by this code or other ordinance.

(b) The license tax or fee for an initial license upon the commencement of business shall be in proportion to the annual tax or fee as the duration of the license is to the license year; provided, that no license for any length of time shall be issued for less than two dollars.

4-108. Display of license.

Each person to whom a city license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry his license upon his person at all times while engaging in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom he is transacting business or any law enforcement officer.

4-109. License does not legalize unlawful acts -- generally.

Nothing in this article, and no payment for or issuance of any town license under the provision hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from any penalty prescribed for such violation.

4-110. Prosecution for violations, recourse of town to seek injunctions.

If any person engages in or prosecutes any business, profession, calling, or vocation contrary to any of the provisions of this code, whether without first obtaining a town license therefor or by continuing the same after the termination of the effective period of such license, he shall be subject to immediate prosecution in the municipal court and, in addition, any elected official of the town may, in the name of the town, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.

(Section amended 1989)

4-111. Penalties: collection by proceedings in court.

Except as may be expressly provided otherwise by this code or by the code of the State of West Virginia, any person violating any provisions under this article shall, upon conviction thereof, be liable for a fine of not less than twenty nor more than one hundred dollars in addition to the prescribed license tax or fee.

The Town Recorder may collect any license tax, fee, Or penalty unpaid under the provisions of this article by appropriate proceedings in any court of competent jurisdiction. (See West Virginia Code §8-13-15.)

4-112. Suspension and revocation of licenses, and public hearings upon appeal from revocation.

The Town Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him pursuant to the provisions of this code for any reason which would have been grounds for denial of such license when first issued; for violation of any term or condition of such license; for violation of any pertinent provision of state law, this code, or Other ordinance, or for the perpetration or attempted perpetration of fraud, malpractice, or malfeasance by the licensee; without prejudice to prosecution of such licensee by the town. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the Town Recorder to further investigate the grounds for revocation and to reconsider his action, and if the Town Recorder accedes to such request he may suspend or reinstate the license pending his final decision. If the Town Recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to the Common Council, appear in person or by council, and may have the attendance of witnesses, books and papers in his behalf, and may testify in person. The decision of the Common Council following such hearing shall be final, subject only to such judicial review as may be provided by law.

Article Two

Business and Occupation Taxes

4-201. Authority to Levy Business and Occupation Tax

Authorization

Pursuant to the authority granted to municipalities under West Virginia Code §8-13-5, the Town of Sutton is authorized to levy and collect a Business and Occupation (B&O) Tax upon persons, firms, partnerships, corporations, and other entities engaging in business activities within the corporate limits of the Town.

Beginning July 1, 2026, all businesses operating within the corporate boundaries of the Town of Sutton shall be subject to the Town's Business and Occupation Tax as established by this ordinance.

The tax shall be measured by the gross receipts or gross income of the business derived from activities conducted within the Town.

The rate of any municipal Business and Occupa0074ion Tax shall not exceed the maximum rate permitted under state law.

4-202. Definitions

For the purposes of this article, the following terms shall have the meanings indicated:

Business - Any activity engaged in with the object of gain, benefit, or advantage, either direct or indirect, including trade, commerce, manufacturing, services, or other commercial activity conducted within the corporate limits of the Town.

Gross Income / Gross Receipts - The total receipts derived from trade, business, commerce, sales, or services conducted within the Town, without deduction for labor costs, taxes, royalties, interest, discounts, expenses, or amounts paid to employees or independent contractors.

Property - Real property and improvements thereto purchased or leased for use as part of a business operation located within the Town.

Business and Occupation Tax Liability - The amount of tax owed by a taxpayer calculated by applying the applicable tax rate to the taxpayer's gross receipts generated within the Town during the reporting period.

4-203. Filing and Payment of Tax

All taxpayers subject to this article shall file Business and Occupation Tax returns quarterly for the following reporting periods:

1. Quarter 1 — July 1 through September 30
2. Quarter 2 — October 1 through December 31
3. Quarter 3 — January 1 through March 31
4. Quarter 4 — April 1 through June 30

Tax returns shall be filed and paid within thirty (30) days following the end of each reporting period.

The Town may require returns to be filed on forms prescribed by the Recorder.

4-204. Business and Occupation Tax Rates

There is hereby levied and imposed upon persons engaging in business activities within the corporate limits of the Town of Sutton a Business and Occupation Tax measured by the gross receipts derived from such activities, according to the following classifications and rates.

The tax shall be computed per one hundred dollars ($100) of gross receipts, unless otherwise specified.

Business Classification	**Rate Per $100.00**
Manufacturing, compounding, or preparing products for sale	$0.30
Wholesale sales (including distribution)	$0.10
Retail sales of tangible personal property	$0.50
Contractors and construction services	$0.30

Amusements and entertainment businesses	$0.50
Service (including professional services) And all other businesses	$1.00
Public utilities (as permitted by law)	$0.50
Rental or Leasing of real or personal property	$1.00
Liquor - Retail Sale (Class B/Outlet)	$1.25
Liquor - Service & Other Business (Class A/On-Premises)	$1.50

If a business engages in more than one classification, the tax shall be computed separately for each activity.

The Town Council may amend the tax rates or classifications by ordinance, provided such rates do not exceed those permitted under West Virginia law.

4-205. Penalties and Late Payment

Any tax not paid by the due date shall be subject to the following penalties:

A. Five percent (5%) penalty after the first thirty (30) days past due

B. One percent (1%) additional penalty per month or fraction thereof until paid

The Town may pursue collection of unpaid taxes in accordance with applicable municipal and state law.

4-206. New Business Tax Credit

To encourage economic development and business investment within the Town of Sutton, a New Business Tax Credit is hereby established.

A. Definition of New Business

For purposes of this section, a new business shall mean:

1. A commercial, wholesale, retail, manufacturing, or service business establishing its primary place of operation within the corporate limits of the Town; or

2. A business relocating its principal place of operation from outside the Town into the corporate limits through purchase or lease of real property.

A qualifying lease shall generally be five (5) years or longer, although leases of six (6) months or longer with an option to extend may be considered upon review by the Town Council.

Businesses incorporated into the Town through annexation or boundary adjustments may also qualify as new businesses.

A business shall not qualify as a new business if:

1. it previously operated within the Town and merely changes its name or organizational structure; or

2. an existing business is sold or transferred but continues substantially the same operations.

B. Amount of Credit

Qualified new businesses may receive the following Business and Occupation Tax credits:

Year 1 — 75% credit of the tax liability
Year 2 — 50% credit of the tax liability
Year 3 — 25% credit of the tax liability

The total tax credit granted to any qualifying business shall not exceed $300,000.

C. Eligibility Requirements

To claim the credit:

1. the business must file all required B&O tax returns on time

2. all required documentation must be submitted to the Town

Failure to file a required return by the due date may result in denial of the credit for the applicable period.

4-207. Administration and Enforcement

The Recorder of the Town of Sutton shall administer this article and shall:

1. prepare and distribute required forms
2. maintain records of filings and payments
3. collect and account for all taxes imposed under this article

The Town Council may adopt rules and procedures necessary to administer this ordinance.

The Council shall have authority to determine eligibility for tax credits and resolve disputes concerning qualification under this article.

4-208. Audit Authority and Examination of Records

In order to verify the accuracy of any Business and Occupation Tax return filed under this article, the Town of Sutton shall have the authority to examine the records of any taxpayer subject to this tax.

The Recorder, or any authorized representative of the Town, may:

1. Examine the books, papers, records, invoices, and other documents of any taxpayer that relate to the gross receipts or business activities conducted within the corporate limits of the Town;
2. Require the taxpayer to provide information necessary to determine the correct amount of tax due;
3. Conduct an audit of any taxpayer when the Town has reason to believe a return may be incomplete, inaccurate, or not filed as required

Such examinations may include records related to sales, services, contracts, or other transactions that generate gross receipts subject to the Business and Occupation Tax.

All taxpayers subject to this article shall maintain adequate records for a minimum period of three (3) years and shall make such records available to the Town upon reasonable notice.

If an audit determines that additional taxes are due, the Town shall notify the taxpayer in writing of the amount due, including any applicable penalties and interest.

4-209. Appeals and Administrative Review

Any taxpayer who disagrees with a determination made by the Town regarding the assessment of a Business and Occupation Tax, penalty, denial of credit, or other decision made under this article may file a written appeal.

A. Filing an Appeal

The taxpayer shall submit a written appeal to the Recorder of the Town of Sutton within thirty (30) days from the date of the written notice of the determination being appealed.

The appeal shall include:

1. the name and address of the taxpayer
2. the tax period in dispute
3. a statement of the reason for the appeal
4. any supporting documentation.

B. Review by Council

Upon receipt of the appeal, the matter shall be placed on the agenda of the next available Town Council meeting or a meeting scheduled for that purpose.

The Town Council shall review the matter and may:

1. uphold the original determination

2. modify the assessment

3. grant relief where appropriate under this article.

The taxpayer may present information or documentation supporting the appeal.

C. Final Administrative Decision

The decision of the Town Council shall constitute the final administrative determination of the Town.

Nothing in this section shall prevent a taxpayer from seeking further review in a court of competent jurisdiction as provided by law.

4-210. Business Registration Requirement

A. Every person, firm, partnership, corporation, or other entity engaging in business within the corporate limits of the Town of Sutton shall register with the Town prior to commencing business operations. The registration shall be filed with the Town Recorder on forms prescribed by the Town and shall include:

1. the name and address of the business;

2. the name of the owner or responsible officer;

3. the location of the business within the Town;

4. the nature of the business activity conducted.

Registration shall be required annually, unless otherwise provided by the Town. Registration does not relieve any person from the obligation to file and pay the Business and Occupation Tax imposed by this article.

Failure to register may result in the assessment of penalties and enforcement actions as authorized by this ordinance.

4-211. Allocation of Gross Receipts

When a business conducts activities both within and outside the corporate limits of the Town, only the portion of gross receipts attributable to business conducted within the Town shall be subject to the Business and Occupation Tax.

The taxpayer shall maintain records sufficient to demonstrate the allocation of receipts between locations.

If adequate records are not provided, the Town may reasonably estimate the portion of gross receipts attributable to business conducted within the Town based upon available information.

4-212. Failure to File Return

If a person required to file a Business and Occupation Tax return fails to do so within the required time period, the Town may estimate the tax due based on:

1. prior tax returns filed by the taxpayer;
2. records available to the Town;
3. information obtained through audit; or
4. other reasonable methods of determining gross receipts.

The estimated tax shall become due and payable unless the taxpayer files a proper return and provides documentation demonstrating the correct amount due.

4-213. Confidentiality of Tax Information

Except as otherwise provided by law, all tax returns, reports, financial information, and supporting documents submitted to the Town of Sutton pursuant to this article shall be confidential and shall not be disclosed to any person other than authorized municipal officials responsible for administering or enforcing the provisions of this article.

No officer, employee, or agent of the Town shall disclose any information contained in a tax return or obtained through an audit or investigation conducted under this article, except:

1. When required for the proper administration or enforcement of this article;
2. When required by lawful court order or legal process;
3. When the information is provided in a form that does not identify any particular taxpayer; or
4. When disclosure is otherwise permitted by West Virginia Code §11-10-5d or other applicable law.

Nothing in this section shall prevent the Town from publishing or releasing aggregate statistical information concerning Business and Occupation Tax collections, provided that such information does not reveal the identity or financial information of any individual taxpayer

Any unauthorized disclosure of confidential tax information by a municipal officer or employee may result in disciplinary action and any other remedies permitted by law.

4-214 Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

4-215. Lien of tax due and unpaid.

A tax due and unpaid under this article shall be a debt to the town. It shall be a personal obligation of the taxpayer and shall be a lien upon the property of the taxpayer; provided, that no such tax lien shall be enforceable against a purchaser (including lien creditor) for valuable consideration without notice, unless docketed in the office of the County Clerk of Braxton County.

4-216. Enforcement of collection.

The town may use any means for the collection of the taxes imposed by this article as are provided by law for the enforcement and collection of similar taxes of the State of West Virginia.

4-217. Payment when person sells out or quits business; lien liability of successor.

Any person exercising any privilege taxable under this article who shall sell out his business or stock of goods, or Shall cease doing business, shall file the return prescribed by Section 4-206 of this article and remit the entire tax that may be chargeable against him because of all business done, within thirty days after selling out his business or stock of goods, or ceasing to do such business.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy the taxes and penalty which may be due until the former owner shall produce a receipt from the Town Recorder evidencing the payment of such taxes and penalty. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes and penalty shall remain unpaid after expiration of the thirty-day period allowed for payment thereof, he shall be personally liable for the payment of all such taxes and penalty, and the same shall be recoverable by the Town Recorder as provided by Section 4-208 of this article.

4-218. Recording of tax liens.

The Town Recorder, for the more effective collection of the tax, may file with the Clerk of the Braxton County Commission a certified copy of an assessment of taxes under this article for recordation. Upon payment of the taxes delinquent under this article for recordation. Upon payment of the taxes delinquent under this article, the lien of which shall have been recorded, the Town Recorder shall certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificates, One to the taxpayer and one to the Clerk of the Braxton County Commission. From the date that such certificate is admitted to record the land of the taxpayer in the town shall be free from any lien for taxes under this article accrued to the date that the certificate was issued, if the tax be paid in full.

4-219. Collection by action or suit, injunction.

The town may collect any tax, interest penalty due and unpaid under the revisions of this article by action in debt, assumpsit, motion for judgment, or other appropriate proceedings in the county in which (a) the activity taxed was engaged in or (b) the taxpayer resides; or by suit to enforce the lien therefor in a county in which any property of the taxpayer may be found; or the tax due and unpaid under this article may be recovered by suit in any of competent jurisdiction. If the failure of any taxpayer to comply with the provisions of this article shall have continued sixty days, the town may proceed to obtain an injunction restraining the taxpayer from doing business in said town until he fully complies with the provisions of this article.

4-220. Offenses, penalties.

It shall be unlawful for any person to refuse to make any return required to be made by this article; or to make any false or fraudulent return or false statement in any return, with intent to defraud the town or to evade the payment of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice president, secretary, or treasurer of any corporation to make or permit to be made for any corporation or association any false return or any false statement in any return required by this article, with the intent to evade the payment of any tax hereunder. And person violating any of the provisions of this section shall, on conviction thereof, be fined not more than one thousand dollars or imprisoned not exceeding thirty days, or punished by both such fine and imprisonment, at the discretion of the court. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intention aforesaid shall be guilty of the offense of false swearing and, on conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement, as aforesaid, shall be made, shall be punished by a fine of not more than one thousand dollars.

4-221. Authority of council to revoke city licenses as additional

penalty.

In addition to the penalties provided in Section 4-220 of this article, the failure of any taxpayer to make any required return or to pay the tax imposed upon him by this article, either or both, within five days following the prescribed date for the filing of such return or the payment of such tax, shall constitute good cause for the Common Council to revoke or to refuse to renew, either or both the town license of such taxpayer to engage in the business taxed under this article, as well as any other town business license held by him or it.

Article Three

Miscellaneous Businesses and Activities

4-301. Amusement tax.

The town shall have plenary power authority to levy and collect an admission or amusement tax upon any public amusement or entertainment conducted within the corporate limits thereof for private profit or gain. The tax shall be levied upon the purchaser and added to and collected by the seller with the price of admission, or other charge for the amusement or entertainment. The tax shall not exceed two percent of the admission price or charge, but a tax of at least one cent per admission shall be levied and collected in any case.

Any ordinance imposing such tax shall contain reasonable rules and regulations governing the collection thereof by the seller and the method of his payment and accounting therefore to the town.

(See West Virginia Code §8-13-6)

4-302-1. Hotel/Motel Occupancy Tax.

A City Hotel/Motel Tax shall be imposed by order of the Common Council duly entered of record. Such Tax shall be imposed uniformly throughout the Town of Sutton: on Hotels and Motels located within the corporate limits of said municipality situated, in whole or in part, within the City.

4-302-2.

The tax shall be imposed on the consumer and shall be collected by the Hotel/Motel operator as part of the consideration paid for the occupancy of a Hotel/Motel room, Provided, that the tax shall not be imposed on any consumer occupying a Hotel/Motel room for Thirty or more consecutive days.

4-302-3.

The rate of tax imposed shall be Three (3) percent of the consideration paid for th use or occupancy of a Hotel/Motel room. Such consideration shall not include the amount of tax imposed on the transaction under Article Fifteen, Chapter Eleven of the W.Va. Code, or charges for meals, valet services, room service, telephone service or other charges or consideration not paid for use of occupancy of a Hotel/Motel room.

4-302-4.

Consideration means the amount received in money, credits, property or other consideration for or in exchange for right to occupy a Hotel/Motel room.

4-302-5. 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 parks offering accommodations as herein set forth. The term "Hotel" shall not be construed to mean any hospital, Sanitarium, extended Care Facility, or Nursing Home.

4-302-6.

"Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public situated within a hotel.

4-302-7.

"State park" means any state-owned facility which is part of this staters park and recreation system established or to be established.

4-302-8.

The consumer shall pay to the Hotel operator the amount of tax herein imposed. This tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this order on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy, or use of a hotel room. The taxing authority's claim shall be enforceable against the moneys so commingled excepting only claims of the state for money held by the hotel.

4-302-9.

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 not to be considered an element in the price to be collected from the consumer.

4-302-10.

No profit shall accrue to any person as a result of the collection oI this tax.

4-302-11.

Payment of this tax shall be due and payable in monthly installments on or before the Fifteenth day of the calendar month next succeeding the month in which the tax occurred; Provided, that credit sales in which the tax authorized by this article is not collected by the hotel operator at the time such sales, such tax shall not be regarded as having occurred until the date on which it is either received by the hotel operator or upon expiration of the Thirty day payment period, whichever shall occur first. The hotel operator shall, on or before the Fifteenth day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the taxing authority.

4-302-12.

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 for as the taxing authority may require for a period of not less than Three years unless consented to in writing by the taxing authority.

4-302-13.

The tax authority shall devise administrative procedures for assessment, collection and refund of the tax authorized by this order. The Recorder shall be the City's agent for administration and collection of the tax and shall have the power to distrain property and to initiate civil suits for collection of this tax. The City Recorder shall have the power and duty to issue tax returns and to receive tax returns for this tax.

4-302-14.

Proceeds of this tax collected and remitted to the taxing authority pursuant to this order shall be deposited into the general revenue fund of the Town of Sutton and after appropriation thereof shall be expended only as provided hereafter or outlined by the West Virginia State Code Section 7- 18-14.

Article Four

Public Utilities Excise Tax

4-401. Authority to levy tax.

The council shall have plenary power and authority, as provided by the laws of the State of West Virginia, to levy and collect an excise tax on the privilege of purchasing, using, or consuming, within the corporate limits of the town, public utility services and tangible personal property from public utilities subject to the jurisdiction of the Public Service Commission of West Virginia.

(See West Virginia Code §8-13-5a)

4-402. Definitions.

The following words and phrases when used in this article shall for the purposes of this article have the following respective meanings:

(1) "Public utility service" means all services and tangible personal property purchased within this municipality from a seller, as hereinafter defined; namely, telephone service, electric service, gas service including bottled or liquid gas if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia, water service, and sanitary sewer service, if purchased, used, or consumed within the corporate limits of this municipality or any other type of government be privately owned or owned by a municipality or any other type of government entity;

(2) "Purchaser" included every person who purchases, uses, or consumes a public utility service;

(3) "Seller" includes every persOn, whether a public service corporation, a municipality or other government entity, or a private corporation, classified as a public utility and subject to the jurisdiction of the Public Service commission of West Virginiar who sells, furnishesr Or supplies a public utility service;

(4) "User" means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.

4-403. Imposition and levying of tax; rate of tax.

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using, or consuming, within the corporate limits of this municipality, such public utility service. Such tax shall be in the amount of two percent of the charge (exclusive of any federal or state tax thereon imposed upon the purchaser) made by the seller against the purchaser with respect to each public utility service. The tax imposed and levied by this article is in addition to all other taxes imposed and levied by this municipality.

In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars in any given calendar month to any single purchaser, no tax shall be imposed for such additional purchase, use, or consumption in excess of said amount of twenty thousand dollars. In the event more than one public utility shall furnish the identical public utility service to the same purchaser, said purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service.

4-404. Exemptions.

The tax hereby imposed and levied shall not apply to the following transactions Which transactions are hereby exempted from such tax:

(1) Purchases of public utility service for resale;

(2) Purchases of public utility service by the United States of America, the State of West Virginia, and the political subdivisions, municipalities, boards, commissions, authorities, and public corporations thereof,

(3) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied;

(4) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges or tolls for telephone calls to points outside the limits of this municipality;

(5) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

4-405. Collection and payment of taxes.

Said tax shall in every case be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect the said excise tax at the time of collecting the purchaser price charged for its public utility service. The taxes levied hereunder shall be due and payable to the town in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The seller shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter on a form to be prescribed by the Town Recorder, sign the same, and mail the same together with a remittance of the amount of the tax to the Recorder of the Town of Sutton.

In estimating the amount of tax due for each quarter the seller may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any tax year, the seller may pay the same quarterly as aforesaid or with the consent in writing of the Recorder of the Town of Sutton, annually at the end of the month next following the close of the tax year.

4-406. Records, inspection thereof.

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of this municipality which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefor, and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of this municipality at reasonable times, and the duly authorized agents of this municipality shall have the right, POwer and authority to make at the expense of the town such transcripts thereof during such times as they may desire.

4-407. Non-liability of utility for errors; duty of municipality; refunds: use of tax funds.

There shall be no liability upon the seller for erroneously collecting the tax hereby impose and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used, or consumed within the corporate limits of this municipality, the seller shall refer the question to the common council and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by the Town Recorder upon the decision of the council. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

The council shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article. Said tax funds so collected shall be used and expended solely for providing a maintaining the police and fire protection services of the Town of Sutton.

4-408. Enforcement provisions; penalties.

Any amount of tax due and unpaid under the provisions of this article shall be a debt due this municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in the applicable sections of the Code of the State of West Virginia, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars for each such offense. The failure or refusal to pay the tax for public utility service purchased, used, or consumed during different periodic statement periods shall constitute a separate and distinct offense for each period.