

AN ORDINANCE IMPOSING AND LEVYING A TAX ON THE PRIVILEGE OF PURCHASING, USING OR CONSUMING PUBLIC UTILITY SERVICES OR TANGIBLE PERSONAL PROPERTY SUPPLIED BY PUBLIC UTILITIES; DEFINING TERMS; FIXING THE AMOUNT OF SUCH TAX; PROVIDING FOR THE COLLECTION OF SUCH TAX AND THE METHOD OF PAYMENT AND ACCOUNTING THEREFOR TO THE MUNICIPALITY; SPECIFYING THE EFFECTIVE DATE OF THIS ORDINANCE; REQUIRING PRORATION AND RECORDS, AND AUTHORIZING INSPECTIONS OF RECORDS; PROVIDING EXEMPTIONS; SPECIFYING NONLIABILITY OF PUBLIC UTILITIES AND DUTIES OF THE MUNICIPALITY; REQUIRING REFUND CLAIMS TO BE PRESENTED TO THE MUNICIPALITY; AUTHORIZING RULES AND REGULATIONS; ESTABLISHING LIENS, REMEDIES AND CRIMINAL PENALTIES FOR VIOLATIONS OF THE ORDINANCE; REQUIRING NOTICE TO PUBLIC UTILITIES; AND PROVIDING A SEVERABILITY CLAUSE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MANNINGTON, WEST VIRGINIA:

That an excise tax upon the privilege of purchasing, using or consuming within the corporate limits of this municipality any public utility service and tangible personal property supplied by any public utility subject to the jurisdiction of the Public Service Commission of West Virginia (whether such public utility be privately or municipally owned or otherwise owned by any type of governmental entity) is hereby imposed and levied as follows:

Section 1. Definitions.

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

- (a) "Person" includes individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character;

- (b) "Public utility service" means all services and tangible personal property purchased within this municipality from a seller, as hereinafter in this section 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;
- (c) "Purchaser" includes every person who purchases, uses or consumes a public utility service;
- (d) "Seller" includes every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies a public utility service; and
- (e) "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.

Section 2. Imposition and levying of tax; amount 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) made by the

seller against the purchaser with respect to each public utility service, which tax in every case shall 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. The tax imposed and levied by this ordinance is in addition to all other taxes imposed and levied by this municipality.

Section 3. Collection; time of payment; accounting; effective date of ordinance; proration.

It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect from each purchaser for the use of this municipality the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to this municipality and each seller shall remit the amount of tax shown by said report to have been collected to this municipality on or before the last day of the second calendar month following the calendar quarter in which collected. The tax imposed and levied by this ordinance shall apply to the periodic statements rendered after July one, one thousand nine hundred seventy-one for public utility service rendered subsequent to July one, one thousand nine hundred seventy-one, and when any such periodic statement covers public utility service rendered both before and after said date, only that portion of the charge for public utility service rendered after said date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after June thirty, one thousand nine hundred seventy-one, within the period covered by such periodic statement, bear to the total number of days covered

by such periodic statement. The required reports shall be in the form prescribed by the City Clerk of the City of Mannington who is charged with the responsibility of collecting taxes due this municipality.

Section 4. 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, 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 this municipality such transcripts thereof during such times as they may desire.

Section 5. Exemptions.

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

- (a) Purchases of public utility service for resale;
- (b) 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, which the municipality shall have identified in writing to the seller.
- (c) Purchases of tangible personal property such as appliances or similar objects, as distinguished from the public service supplied;
- (d) 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 corporate limits of this municipality; and

(e) Nonrecurring or one-time charges incidental to the furnishing of public utility service, such as installation charges or service charges.

Section 6. Nonliability of utility; duty of municipality; refunds; rules and regulations.

There shall be no liability upon the seller for erroneously collecting the tax hereby imposed 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. Any tax advanced to the municipality by the seller and not paid by the purchaser owing such tax, may be deducted by the seller from a subsequent payment to the municipality by the seller hereunder; provided, however, that the seller shall supply the municipality with a list of the names and addresses of the said delinquent purchasers. 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 official of this municipality charged with the responsibility of collecting taxes due to this municipality, 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 such officials of this municipality. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

The Clerk of the City of Mannington shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this ordinance.

Section 7. Enforcement provisions; penalties.

Any amount of tax due and unpaid under this ordinance shall be a debt due this municipality. It shall be a personal obligation of the purchaser and the collection of the tax imposed by this ordinance shall be enforceable in any Court of competent jurisdiction as any other debt owed by one person to a corporation.

Any purchaser who willfully fails or refuses 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 three hundred dollars. 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.

Section 8. Notice to utilities.

The tax hereby imposed and levied shall not be effective until this municipality gives sixty days' written notice by certified mail of the effective date of the ordinance to any public utility doing business within this municipality which is required to collect the tax imposed and levied hereby.

Section 9. Severability.

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

Passed by the Town Council of the Town of Mannington, West

Virginia, this 17th day of May, 1971.

Joseph L. Rush
Mayor

ATTEST:

Margaret Nutter
Town Clerk