

**AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING
ARTICLE 787 OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON,
AS REVISED, ELIMINATING THE BUSINESS AND OCCUPATION TAX ON
MANUFACTURING BUSINESSES, AND REDUCING THE BUSINESS AND
OCCUPATION TAX ON RETAIL BUSINESSES AND SERVICE BUSINESSES.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON,
CABELL AND WAYNE COUNTIES, WEST VIRGINIA,** that Article 787 of the Codified Ordinances of the City of Huntington, as revised, is hereby **AMENDED, MODIFIED and RE-ENACTED** to read as follows:

**ARTICLE 787
BUSINESS AND OCCUPATION TAX**

~~787.08 MANUFACTURING, COMPOUNDING OR PREPARING PRODUCTS.~~

~~(A) Upon every person engaging or continuing within this City 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 electric power produced by public utilities or others and not taxed under other sections of this article, the amount of the tax to be equal to the value of the article, substance, commodity or electric power 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 twenty one-hundredths of one percent.~~

~~The measure of the tax in this section is the value of the entire product manufactured, compounded or prepared in this City for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside this City.~~

~~It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within this City and partially manufactures, compounds, or prepares such products outside this City, the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this City bears to the entire payroll cost of manufacturing the product.~~

~~A person exercising any privilege taxable under this section and engaging in the business of selling his products in this City shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in Section 787.09 for the privilege of engaging in the business of selling such products in this City.~~

~~Persons who manufacture, compound or prepare products outside of this City and who make sale of the same within this City shall not pay the tax imposed by this section but shall pay the tax imposed by Section 787.09 for the privilege of selling said product within this City.~~

~~(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 Chapter 7-60;~~

~~(D) — Corporations, associations and societies organized and operated exclusively for religious or charitable purposes; or~~

~~(E) — Production credit associations, organized under the provisions of the federal "Farm Credit Act of 1933", provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code Chapter 4-19.~~

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787.09 THE BUSINESS OF SELLING TANGIBLE PROPERTY; SALES EXEMPT.

Upon every person engaging or continuing within this City in the business of selling any tangible property whatsoever, real or person, including the sale of food in hotels, restaurants, cafeterias, confectioneries, and other public eating houses, except sales of any person engaging or continuing in the business of horticulture, agriculture, or grazing, or selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equal to ~~five-tenths of one percent (.50%)~~ **one-fourth of one percent (.25%)** of the gross income of the business, except that in the case of selling at wholesale, the tax shall be equal to three-twentieths of one percent of the gross income of the business.

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787.13 SERVICE BUSINESS OR CALLING NOT OTHERWISE SPECIFICALLY TAXED.

Upon every person engaging or continuing within this City in any service, business or calling not otherwise specifically taxed under this article, there is likewise hereby levied and shall be collected a tax equal to ~~one percent (1%)~~ **.50%** of the gross income of any such business.

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787.54 TAX INCENTIVES FOR CERTAIN BUSINESSES.

(a) For the purpose of this section, the following definitions shall apply:

- (1) "New business" means any business for gain or economic benefit which opens an office or other place of business within the City on or after June 1, 2008; provided that, businesses located within the City that transfer

ownership shall not be considered “new businesses” within the meaning of this section.

- (2) “Back office operation” means any business that has an office located in the City which is used solely for providing administrative services for the business and said office does not solicit or conduct business directly with clients or customers at that location.
- (3) “Retail sales” are sales of any kind for gain or economic benefit which is not being sold at wholesale as defined in Section 787.05(I).

(b)Back Office Operation Exemption. Every new business, which does not have any other existing office or existing business located within the City as of June 1, 2008, and has not maintained another office or other place of business in the City for the preceding twelve (12) month period, upon locating a back office operation within the City, shall be granted a partial exemption, as stated in subsection (b)(1) hereof, from the Business and Occupation Tax set forth in this article. Said tax incentives may only take effect upon the enactment of a resolution granting a specific business the tax incentive.

- (1) Tax credits granted under subsection (b) hereof shall be granted to businesses employing a minimum of fifty (50) full-time employees or the equivalent of fifty (50) full-time employees during the time of the credit as follows:
 - A. For the first three (3) full years of operation, the business shall be granted a tax credit equal to fifty percent (50%) of the business and occupation tax due.
 - B. After the end of the third full year of operation, the business shall pay one hundred percent (100%) of all business and occupation taxes due.
 - C. Fifty (50) full-time employees or the equivalent thereof would be 1,875 hours per week worked by all employees ($37.5 \times 50 = 1,875$).
- (2) The administration may promulgate regulations which shall provide for tax credits to be provided to back office operations employing less than fifty (50) full-time employees or the equivalent thereof during the period of the credit. The regulations shall provide for tax incentives that shall be provided consistent with this section. Regulations would include but not be limited to:
 - A. The number of hours worked.
 - B. The amount of projected gross sales.
 - C. The total square footage occupied by the business.
 - D. The gross amount of payroll the company would generate in the City.
- (3) In order to qualify for tax credits under subsection (b), the business must make available all necessary information to verify qualification under this section. This requirement shall be in effect for the duration of the tax credit.

(c)New Retail Business Exemption. Any New Business that locates within the corporate limits of the Municipality and employs a minimum of fifteen (15) or more full-time employees or the equivalent of fifteen (15) or more full-time employees shall be granted a partial

exemption, as stated in subsection (c)(1) hereof, on their Retail Sales, as defined in subsection (a)(3) hereof, from the Business and Occupation Tax set forth in this article. Fifteen (15) full-time employees or the equivalent thereof would be 562.50 hours per week worked by all employees (37.5 X 15 = 562.50).

- (1) Tax credits granted under subsection (c) hereof may be granted to New Businesses solely on their Retail Sales as follows:
 - A. Fifty percent (50%) of the amount of tax computed under the provisions of this article during the first full year of the New Business's operation.
 - B. Fifty percent (50%) of the amount of tax computed under the provisions of this article for the second full year, or portion thereof of the New Business's operation.
 - C. Fifty percent (50%) of the amount of tax computed under the provisions of this article for the third full year, or portion thereof, of the New Business's operation.
 - D. There shall be no further tax credits under subsection (c) hereof for the fourth full year, or portion thereof, and for each successive year thereafter, of the New Business's operation.
- (2) The administration may promulgate regulations which may provide for tax credits on Retail Sales to be provided new businesses employing less than fifteen (15) full-time employees or the equivalent thereof during the period of the credit. The regulations shall provide for tax incentives that shall be provided consistent with this section. Regulations would include but not be limited to:
 - A. The number of hours worked.
 - B. The amount of projected gross sales.
 - C. The total square footage occupied by the business.
 - D. The gross amount of payroll the company would generate in the City.
- (3) Tax credits granted under subsection (c) hereof cannot be taken by any business who is receiving tax credits under subsection (b) or (d) hereof.

~~(d) Manufacturing Business Exemption. Any manufacturing business that establishes operations in the City of Huntington by start up of a new manufacturing business employing a minimum of ten (10) employees, an established manufacturing business moving into the City of Huntington employing a minimum of ten (10) employees, or an established manufacturing business voluntarily being annexed into the City employing a minimum of ten (10) employees shall be granted a tax credit equal to fifty percent (50%) of the Business and Occupation Tax due for the first three (3) full years of operation.~~

(e) Service Business Exemption. Any service business that establishes operations in the City of Huntington by start up of a new business, an established service business moving into the City of Huntington or an established service business voluntarily being annexed into the City of Huntington shall receive a fifty percent (50%) reduction in B&O tax if a minimum of five (5) employees (including Owner/Operator) are maintained for the duration of the three-year period.

(f) Annexation Exemption. Any existing ongoing business situated outside of the corporate limits of the Municipality which would otherwise be subject to the terms of this article if located within the corporate limits of the Municipality, shall upon the annexation of territory in which such business is located, into the corporate limits of the Municipality be granted a partial exemption, as stated in subsection (d) hereof, in the amount of fifty percent (50%) of the amount of tax computed under the provisions of this article during the first three (3) years of operation, or portion thereof, after annexation of the additional territory into the corporate limits of the Municipality.

- (1) Tax credits granted under subsection (e) hereof cannot be taken by any business who is receiving tax credits under subsection (b), (c) or (d) hereof.

(g) Notwithstanding the provisions of this section, any tax credit previously granted a business which has transferred ownership shall continue for the remainder of the period of the credit.

(h) All new businesses that are eligible for multiple incentives are to be given a choice of the best option incentive available to them.

(i) Notwithstanding the provisions of this section, tax credits allowable under this section shall be claimed within six (6) months of the business being registered with the Municipality. Failure to timely apply for tax incentives for the six (6) month period shall operate as a waiver to any claim for tax incentives identified in this article.

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787.56 ADDITIONAL CREDITS.

(a) A person taxable under Section 787.09 with respect to selling products at wholesale in this City shall be allowed a non-refundable credit against those taxes for any of the following:

- (1) Manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this City; and/or
- (2) Extracting taxes paid by such person with respect to the extracting of products so sold in this City or ingredients of products so sold at wholesale in this City.

(b) For the purposes of this section:

- (1) ~~“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 787.08 and (ii) similar gross receipts taxes paid to other municipalities or other local government units (other than State governments) within the United States.~~
- (2) ~~“Extracting tax” means a gross receipts of 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 787.07 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).

- (32) “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 deduction 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.

(c) If imposition of City’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 City’s tax, and still apply the City’s tax to as much of the taxpayer’s activities as may be subject to the City’s taxing authority.

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BE IT FURTHER ORDAINED that this ordinance shall become effective April 1, 2011 upon its adoption by Council and approval by the Mayor.

BE IT FURTHER ORDAINED that all other sections and sub-sections of Article 787 of the Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council

SPONSORED BY COUNCILMAN STEVE WILLIAMS
APPROVED AS TO FORM BY SEM