

## ORDER AMENDING AND ESTABLISHING HOTEL AND MOTEL OCCUPANCY TAX

An Order amending a room occupancy tax on hotels-motels located within the unincorporated areas of Randolph County, West Virginia; establishing procedures for the collection, distribution, and administration of such tax and establishing penalties for failure to comply with the requirements or provisions of this order.

Be it Ordered by the Randolph County Commission of Randolph County, Elkins, West Virginia, as follows:

### ARTICLE I - GENERAL PROVISIONS

#### Section 1.1 - Authority

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

#### Section 1.2 - Purpose

The purpose of this order is to levy an occupancy tax on hotel and motel rooms located in the unincorporated areas of Randolph County for the following purposes:

(A) At least fifty (50%) percent of the net received during the fiscal year by the County, pursuant to requirement of the Code of the State of West Virginia shall be transmitted to the Randolph County Convention & Visitors Bureau, Inc. for the promotion of conventions and tourism.

(B) The remaining portion of the net revenues receivables during the fiscal year by the County may be expended for one or more of the following purposes:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair, and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers, and convention centers:

(2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities:

(3) The promotion of conventions;

(4) the construction or maintenance of public parks, tourist information centers, and recreation facilities (including land acquisition); or

(5) The promotion of the arts.

### Article II - Definitions

## Section 2.1

For the purpose of this order the following words, phrases, and terms are defined.

(A) "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room as herein defined.

(B) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" does not mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivisions thereof.

(C) "Convention and or visitor's bureau" are interchangeable and shall mean the Randolph County Convention & Visitors Bureau, Inc.

(D) "Convention center" means a convention facility owned by the state, county, municipality, or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service, and parking facilities for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

(E) "County" means the County of Randolph.

(F) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the County of payment of any tax which there is a known legal duty to pay.

(G) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the County.

(H) "Fiscal Year" means the year beginning July first and ending June thirtieth of the next calendar year.

(I) "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 includes but is not limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term "hotel" includes state, county and city parks offering accommodations as herein set forth. The term "hotel" does not mean a hospital, sanitarium, extended care facility, nursing home or university or college housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a total of ten days in a calendar year, nor any tent, trailer or camper campsites: Provided, That where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" does, if otherwise applicable, apply to those accommodations for the purposes of this tax.

(J) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent is a hotel operator for the purposes of this order and has the same duties and liabilities as his or her principal. Compliance with the provisions of this order by either the principal or the managing agent is, however, considered to be compliance by both.

(K) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" does not include: (1) A banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations; (2) Sleeping accommodations rented on a month-to-month basis or other rental arrangement for thirty days or longer at the inception at a boarding house, condominium, cabin, tourist home, apartment or home; or (3) Sleeping accommodations rented by a hotel operator to those persons directly employed by the hotel operator for the purposes of performing duties in support of the operation of the hotel or related operations.

(L) "Net proceeds" means the gross amount of tax collections less the amount of tax lawfully refunded.

(M) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.

(N) "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting, and the creative arts through shows, exhibits, festivals, concerts, and musical plays.

(O) "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by the County.

(P) "State park" means any state-owned facility which is part of this state's park and recreation system established pursuant to the Code of the State of West Virginia. For purposes of this order, any recreational facility otherwise qualifying as a "hotel" and situated within a state park is considered to be solely within the county in which the building or buildings comprising the facility are physically situated, notwithstanding the fact that the state park within which the facility is located may lie within the jurisdiction of more than one county.

(Q) "Tax," "taxes" or "this tax" means the hotel occupancy tax authorized by this order.

(R) "Taxing authority" means the County of Randolph.

(S) "Taxpayer" means any person liable for the tax authorized by this order.

(T) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this order, in respect of which the violation occurs: provided, that the mere failure to perform any act shall not be a willful violation under this order. A willful violation of this order requires that the defendant have had knowledge or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.

### ARTICLE III - INCORPORATION OF TAX

#### Section 3.1 - Levy of Tax

There is hereby levied a County hotel/motel tax, as hereinafter described, upon all hotels and motels located within the unincorporated limits of Randolph County, including any hotels owned by the state or by any political subdivision of this state. The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy hotel room. (Provided, however, the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days.)

#### Section 3.2 - Rate of Tax

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

### ARTICLE IV - DUTIES AND PROCEDURES FOR HOTEL/MOTEL OPERATORS

#### Section 4.1 - Consumer to pay tax; hotel or hotel operator

##### Not to represent that it will absorb tax; accounting by hotel

(A) The consumer shall pay to the hotel operator the amount of tax imposed by the County of Randolph, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which shall be collectable as such by the hotel operator who shall account for, and remit to the County, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this order on all bills, invoices, accounts, books of account records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle tax collected hereunder with the proceeds of the rental of hotel accommodations. The County's claim shall be enforceable against, and shall be

superior to, all other claims against the moneys so commingled excepting only claims of the state for moneys held by the hotel pursuant to the provision of Article 15, Chapter 11 of the Code of West Virginia. All taxes collected pursuant to the provisions of this order shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.

(B) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.

#### Section 4.2 - Occupancy Billed to Government Agencies or Employees

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

(B) Hotel room occupancy billed directly to this state or its political subdivision shall be exempt from this tax. Provided, that rooms paid for by an employee of this state for which reimbursement is made shall be subject to this tax.

#### Section 4.3 - Collection of Tax When Sale on Credit

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty (30) days thereafter.

#### Section 4.4 - Receivership Bankruptcy; Priority or Tax

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this order shall be paid from first money available for distribution in priority of all claims and liens except taxes and debts due to the United States which under federal law are given priority over the debts and liens created by Order of the County Commission for this tax and taxes and debts due to the State of West Virginia. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

#### Section 4.5 - Failure to Collect or Remit Tax; Liability of Hotel Operator

If any hotel operator fails to collect the tax authorized by this order and levied pursuant to this order or shall fail to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit: Provided, that such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can by good and substantial evidence prove the refusal of the purchaser to pay this tax despite the diligent effort in good faith of the hotel operator to collect the tax.

#### Section 4.6 - Total Amount Collected to be Remitted

No profit shall accrue to any person as a result of the collection of the tax authorized under this order. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy of six (6%) percent for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

#### Section 4.7 - Tax Return and Payment

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

(B) For the first month that the tax is delinquent, there shall be assessed by the Sheriff/Treasurer a penalty in the amount of five percent of the tax due for the delinquent period. For each additional month that the tax remains delinquent, there shall be further assessed an additional one percent penalty until the tax is paid. No payment for a subsequent period shall be collected until all prior delinquent taxes have been paid in full with all penalties assessed thereto.

#### Section 4.8 - Keeping and Preserving Records

Each hotel operator shall keep a complete accurate record 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 forms as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years, unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

#### Section 4.9 - Liability of Officers

If the taxpayer is an association or corporation, the officer thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by state law, order of

the County Commission or other authority may be enforced against such officers as against the association or corporation which they represent.

ARTICLE V - ADMINISTRATION

Section 5.1 - General Procedure and Administration

The administrative procedure for the assessment, collection and refund of the tax authorized by this order shall be established by the County to aid in the efficient administration of the tax and distribution of its proceeds.

Section 5.2 - Proceeds of Tax: Application of Proceeds

(A) Application of proceeds - The net proceeds of the tax collected and remitted to the taxing authority pursuant to this order shall be deposited into the general revenue of the County and after appropriation thereof shall be expended only as provided in subsection (b) and (c) of this section.

(B) Required expenditures - At least fifty (50) percent of the net revenue receivable during the fiscal year by the County, pursuant to this order shall be transmitted to the Randolph County Convention & Visitors Bureau, Inc. For the promotion of conventions and tourism.

(C) Permissible expenditures - After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by the County, pursuant to this order, may be expended for one or more of the purposes set forth in this subsection but for no other purpose. The purpose for which expenditures may be pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to arenas, auditoriums, civic centers and convention centers.

(2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;

(3) The promotions of conventions;

(4) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition); or

(5) The promotion of the arts.

ARTICLE VI - EXCLUSIONS

Section 6.1

The following exclusions shall apply in the administration of this tax.

(A) The term "consumer" shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or a political subdivision thereof;

(B) Hotel room occupancy billed directly to the federal government shall be exempt from this tax.

(C) Hotel room occupancy billed directly to the State of West Virginia or its political subdivisions shall be exempt from this tax.

## ARTICLE VII - PENALTIES

### Section 7.1 - Criminal Penalties

(A) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to collect or to pay the tax or to willfully refuse to make the return required to be made by this order, or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority, or to willfully evade the payment of the tax, or any part thereof; or for any person to willfully aid or abet another in any attempt to evade the payment of the tax, or for any officer or partner or principal of any corporation or association to willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this order, with the intent to evade the payment of this tax.

(B) Any person willfully violating any of the provisions of this order shall for the first offense be guilty by misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for a period of not more than thirty days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and, upon convictions thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned in the penitentiary not less than one year nor more than three years, or in the discretion of the Court be confined in the county jail not more than one year, or both fined and imprisoned.

(C) Every prosecution for any offense arising under this section shall be commenced within three years after the offense was committed, notwithstanding any provision of this order to the contrary.

(D) Proceedings against any person under this section shall be initiated in the county of this state wherein such person resides if any element of the offense occurs in such county of residence, then in the county where the offense was committed.

## ARTICLE VIII - SEVERABILITY



Section 8.1 Severability

If any section, subsections, paragraph, sentence, clause or phrase of this order shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this order which shall remain in force and effect, and for this purpose the provisions of this order are hereby declared to be severable.

ARTICLE IX - ENACTMENT

Section 9.1 - Effective Date

This order shall take effect on the 2 day of March, 2017.

Section 9.2

Order this 2 day of March, 2017.

THE COUNTY COMMISSION OF RANDOLPH COUNTY

Michael M. Taylor  
MICHAEL M. TAYLOR, PRESIDENT

Chris See  
CHRIS SEE, COMMISSIONER

Mark D. Scott  
MARK D. SCOTT, COMMISSIONER

APPROVED AS TO FORM:

Michael W. Parker  
PROSECUTING ATTORNEY  
MICHAEL W. PARKER

ATTEST:

Brenda Wiseman  
BRENDA WISEMAN, COUNTY CLERK