

TOWN OF TIMBERVILLE

TITLE 4

LICENSES AND TAXES

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TOWN OF TIMBERVILLE

TITLE 4

LICENSES AND TAXES

Originally Adopted October 8, 1987

ARTICLE I – BUSINESS LICENSES

§4-1.0 Definitions.

“Affiliated group” means:

A. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

1. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

2. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term “stock” does not include nonvoting stock which is limited and preferred as to dividends; the phrase “corporation subject to inclusion” means any corporation within the affiliated group irrespective of the state or county of its incorporation; and the term “receipts” includes gross receipts and gross income.

B. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

1. At least eighty percent of the total combined voting power of all classes of stock entitles to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

2. More than fifty percent of total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such ownership is identical with respect to each such corporation.

When one or more of the corporation subject to inclusion, including the common parent corporation, is a nonstock corporation, the term “stock” as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

“Ancillary” means subordinate to, subservient to, auxiliary to, or in aid of, that which is principal and primary.

“Assessment” means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax including additional or omitted tax, that is due. An assessment may be made by a written assessment personally delivered to the taxpayer or his authorized representative, or mailed to the taxpayer’s last known address. An assessment may also include self-assessment made by a taxpayer upon the filing of a return showing a tax due. An assessment includes a return filed on behalf of the tax payer by the local assessing officer. As assessment does not include the imposition of a late filing or late payment penalty except to the extent that the imposition of penalties is associated with or imposed as a result of an audit. The term is also deemed to include the term “assessment of omitted tax.”

“Assessor” means the Commissioner of Revenue.

“Base year” means the calendar year preceding the license year, except for contractors subject to the provisions of §58.1-3715. The local ordinance may provide for a different period for measuring the gross receipts of a business in the following situations: 1) for beginning businesses; or 2) to allow an option to use the same fiscal year for federal income tax purposes.

“Business” means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. It also implies that the person is holding himself out to the public as being in a particular business or occupation and is providing goods or services to others, rather than dealing exclusively for his own account. A person may be engaged in more than one business.

“Collector” means the Treasurer and may include the Sheriff or any person employed to collect delinquent taxes pursuant to Virginia Code Sections 58.1-3934.

“Contracting” means a person engaged in the business of:

1. Accepting or offering to accept orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material;
2. Accepting or offering to accept contracts to do any paving, curbing or other work on sidewalks, streets, alleys, or highways, or public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;

3. Accepting or offering to accept an order for contract to excavate earth, rock, or other material for foundation or any other purpose or for cutting, trimming or maintaining rights-of-way;

4. Accepting or offering to accept an order or contract to construct any sewer of stone, brick, terra cotta or other material;

5. Accepting or offering to accept orders or contracts for doing any work on or in any building or premises involving the erecting, installing, altering, repairing, servicing, or maintaining electric wiring, devices, or appliances permanently connected to such wiring, or the erecting, repairing or maintaining of lines for the transmission or distribution of electric light and power; or

6. Plumbing and steam fitting.

“Definite place of business” means an office or location at which occurs a regular and continuous course of dealing where one holds one’s self out or avails one’s self to the public for thirty consecutive days or more, exclusive of holidays and weekends. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person’s residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

“Direct Seller” means any person who:

1. Engages in the trade or business of selling or soliciting the sale of consumer products primarily in private residences and maintains no public location for the conduct of such business; and

2. Receives remuneration for such activities, with substantially all of such remuneration being directly related to sales or other sales-oriented services, rather than to the number of hours worked; and

3. Performs such activities pursuant to a written contract between such person and the person for whom the activities are performed and such contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

“Financial services” means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments.

“Gross receipts” means all revenues received directly from or with respect to a transaction with a customer of the licensable business net of any returns or allowances granted by the business to its customers. In the case of a licensee who has an ownership interest in the merchandise sold, gross receipts shall include the entire sales price. In the case of a licensee who does not have an ownership interest in the merchandise sold, gross receipts shall include only the commission, fee or other revenue attributable to the sale of such merchandise. For the purpose of determining gross receipts of a licensable business, if merchandise belonging to someone other than the licensee is physically in possession of the licensee and available for sale at or from a definite place of business in the Town on a consignment basis and the licensable business has the authority to transfer title to the customer without disclosing the name of the cosignor, then the licensable business shall be considered as having an ownership interest in such merchandise.

“License year” means the calendar year for which a license is issued for the privilege of engaging in business.

“Licensee” means the person who owns the business for which a license application is made and in whose name the license is issued.

“Person” shall include any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

“Photographer” means a person who provides services consisting of the taking of pictures or the making of pictorial reproductions and includes the employees, agents and canvassers of such person. The term shall not include:

1. Amateur photographers who expose, develop and finish their own work and who do not receive compensation for such work or receive compensation for performing any of the process of photography;
2. Coin-operated photography machines;
3. Photographers providing services in the course of their employment by newspapers, magazines or television stations.

“Purchases” means the gross purchase price paid, less returns and allowances, for all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant for sale at wholesale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares, and merchandise if it cannot determine the cost of manufacturing or chooses not to disclose the cost of manufacturing.

“Professional services” means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the art and science dealing with the prevention, diagnosis, treatment, and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others. The word “profession” implies attainments in professional

knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

“Wholesale sale” means a sale of goods, wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods for sale, and also includes sales to institutional, commercial, industrial, and governmental users which because of the facts and circumstances surrounding the sales, such as the annuity, price, or other terms, indicate that they are consistent with sales at wholesale.

“Sales solicitation” is the act or acts directly related to selling particular items or goods to a particular person. Sales solicitation does not include non-solicitation activities prior or subsequent to sales solicitation activities.

“Services” mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares or merchandise.

§4-1.1 Purpose and policy.

It is the purpose and policy of the Town Council in enacting this ordinance imposing license taxes for the privilege of conducting business in the Town, to equalize as far as practicable the burden of such license taxation among those liable under this ordinance, by adopting, for general application, but subject to any restrictions or exceptions imposed by state or federal law, or any exceptions set forth herein, a system of license taxes measured in most cases by the gross receipts of the business, profession, trade or occupation in respect to which the tax is levied.

§4-1.2 Construction and Definitions.

For any questions of construction or definition of the terms used in this ordinance, reference is hereby made to Subtitle III of Title 58.1 of the Code of Virginia, 1950, as amended, and any guidelines promulgated by the Virginia Department of Taxation.

§4-1.3 Persons subject to tax.

Each and all the taxes hereinafter imposed are in all cases imposed upon the privilege of doing business or exercising a profession, trade or occupation, including all phases of the business, profession, trade or occupation conducted in the Town.

A license shall be obtained by every person for each business or profession prior to conducting business in the Town of Timberville, if (i) the person has a definite place of business or office in the Town, or (ii) there is no definite place of business or office anywhere and the person resides in the Town, or (iii) there is no definite place of business or office in the Town but the person is classified as an itinerant merchant or a peddler. If licensed the previous year, a person must obtain a license prior to March 1st.

§4-1.4 Procedure for obtaining license; collection of tax.

A. Every person liable to the payment of license tax under this ordinance shall make application at the office of the Town Clerk for the appropriate license.

B. The Town Clerk shall furnish license application forms in duplicate, which forms shall provide spaces for the correct name or trade name, if any, of the applicant; the nature of the

business, profession, trade or occupation for which the application is being filed, the place where such business, trade profession or occupation is to be pursued; and such other information as may be required by the Town Clerk.

C. For all licenses based on gross receipts, the Town Clerk shall require a sworn statement from the applicant of the amount of gross receipts of the business, trade, profession, or occupation, except in the case of a first business year as provided for in Section 1.8 of this title.

D. The Town Clerk shall assess each applicant or other person of whom a license is required with the license tax as required by this ordinance and shall retain the original of the completed license application form. Upon the payment of the required license tax, the Town Clerk shall issue the license in duplicate. The original copy of the license shall go to the licensee and the duplicate shall be retained by the Town Clerk.

§4-1.5 Separate license for each place of business.

No license shall be issued to cover more than one place of business, and applicants shall be required to take out separate licenses for each place of business in which the business, profession, trade or occupation to be licensed is pursued; provided, however, that trades or occupation subject to the same rate, measured by the same base, and carried on at the same place or business, may obtain one license for all such businesses, professions, trades or occupations.

§4-1.6 Apportionment.

If a licensee has more than one definite place of business and it is impractical or impossible to determine which definite place of business gross receipts should be attributed under the general

rule, the gross receipts shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to Virginia solely because the other Jurisdiction does not impose a tax on gross receipts attributable to the definite place of business in such other jurisdiction.

§4-1.7 Agreement to apportion among localities.

Local assessors may enter into agreements with each other regarding the manner in which gross receipts shall be apportioned among definite places of business. The sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all definite places of business affected by the agreement. Upon notification from a taxpayer that a method attributing gross receipts is inconsistent with the method of one or more other localities in which the taxpayer is licensed, and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in which the taxpayer is licensed, the assessor shall make a good faith effort to reach an apportionment agreement with the other localities involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to §58.1-3701. Notice of the request shall be given to the other party. Notwithstanding the provisions of §58.1-3993, when a taxpayer has demonstrated to a court that two or political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of §58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required

to a multiple assessments even though it is not then known which assessment is correct and which is erroneous.

§4-1.8 Responsibility for obtaining license. Unlawful to conduct business without a license.

A. It shall be the responsibility of any person conducting a business, profession, trade or occupation, who required by the provisions of this ordinance to obtain a license for the privilege of conducting the same, to obtain such license.

B. It shall be unlawful for any person to conduct a business or engage in a profession, trade or occupation for which a license is provided in this ordinance unless such person shall have procured a license as required under the provisions of this ordinance.

§4-1.9 Situs of gross receipts.

Except as otherwise provided by law, and except as to public service corporations, situs for the local license taxation for any business, profession, trade, occupation or calling subject to licensure shall be the locality in which the person so engaged has a definite place of business. If any such person has a definite place of business in any other locality, then such other locality may impose a license tax on him, provided such other locality is otherwise authorized to impose a local license Tax with respect thereto.

When a BPOL tax is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within Virginia. Where activities are conducted outside of a definite place of business, such as during a visit to a customer location, gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or

controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite place of business or offices as follows:

1. Gross receipts of a contractor shall be attributed to the definite place of business at which the services are performed, or if the services are not performed, or if the services are not performed at any definite place of business, then the definite place of business from which the services are directed or controlled, unless the contractor is subject to the provisions of §58.1-3715.

2. Gross receipts of a retailer and, as an exception, those as wholesalers, shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled.

3. A wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers.

4. Gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which tangible personal property is rented or, if the property is not rented from any definite place of business, then to the definite place of business at which the rental of such property is managed. Gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled.

§4-1.10 Records and accounts.

A. Every person liable for a license tax under this ordinance which is based on gross receipts shall keep all records and accounts necessary to compute and verify such gross receipts. All such records and general books of accounts shall be open to inspection and examination by any authorized agent of the Town.

B. In those cases in which the conduct of the business, profession, trade or occupation involves operations subject to more than one rate or computed on more than one base, as hereinafter set forth, the licensee is required to maintain separate accounts for each operation and shall be separately licensed for each operation; provided that the licensee may elect to maintain a single account for all operations taxed on gross receipts, and in such cases, the tax shall be computed at the highest rate applicable to any part of the business taxed on gross receipts.

C. A taxpayer shall keep its records for the current license year and the preceding three (3) base years where it regularly files BPOL tax returns; however, a locality may review a taxpayer's records for the current license year and the six (6) preceding base years when there has been a failure on the part of the taxpayer to file BPOL tax returns or obtain a BPOL license, or where there has been fraud on the taxpayer's part relating to BPOL taxes. Base year records provide the measure for license tax on gross receipts. See Code of Virginia §§58.1-3703.1 4b and 58.1-3703.1 B2.

§4-1.11 Computation of tax(es).

A. Computation of Tax for First Business Year. Every person beginning a business, profession, trade or occupation which is subject, under this chapter, to a license tax based in whole

or in part on gross receipts shall estimate the amount of gross receipts such person will receive between the date of beginning business and the end of the then current license year, and the license tax for the then current year shall be computed on that estimate. These estimates are subject to correction with interest if they prove to be unreasonable. Estimates will be deemed unreasonable if they are less than 80% of the actual taxes ultimately due.

B. Computation of Taxes. Gross receipts shall include all revenues directly from or with respect to a transaction in the regular course of the licensable business. Gross receipts derived from transactions between the licensable business and the licensee, or other licensable businesses of the licensee shall not be included in taxable gross receipts unless they clearly arise in the regular course of the licensable business or the licensable business does not maintain adequate records and documentation to distinguish such receipts from receipts in its regular course of business.

C. Excluded from Gross Receipts. Gross receipts shall not include

1. Receipts that are deposited into an escrow account to be disbursed on behalf of the client or customer to a third party;
2. Receipts which are received by the licensee as an agent or fiduciary for another person and to whom the licensee must account for the disbursement of such amount whether or not such receipts are placed into an escrow account;
3. Receipts that are reimbursements for amounts advanced by the business as an agent for, and upon instructions from, the principal such as, for example, the payment for filing fees and court costs by a lawyer on behalf of the client;
4. Rebates and discounts taken or received on account of purchase by the licensee. A rebate or other incentive offered to induce the recipient or purchaser certain goods or other services from a person other than the offeror, and which the recipient assigns

to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive;

5. Withdrawals from inventory for which no consideration is received, the occasional sale of assets other than inventory, and inventory swaps between similar businesses (but any cash or other consideration received to adjust for any difference in value of the items swapped shall be a taxable gross receipt);

6. Interest, investment, and other income not directly related to the privilege exercised by the licensable business. This exclusion shall apply to interest on bank accounts of the business, but shall not apply to interest, late fees and similar income attributable to an installment sale that occurred in the regular course of business. Gross receipts from the sale or factoring of accounts receivable created in the regular course of business shall not be taxable gross receipt unless, and only to the extent that, the amount received includes a premium in excess of the sales price already included in taxable gross receipts.

D. Deductions from Gross Receipts. Unless otherwise excluded in this ordinance, all receipts derived from the exercise of a privilege for which a license is required under this ordinance shall be subject to the tax imposed by this ordinance. Deductions shall be allowed for the following items to the extent that they are otherwise included in taxable gross receipts.

1. Taxes paid to the United States, the Commonwealth, and any county, city or town for any federal excise tax on motor fuels, state or local sales and use taxes, and local excise taxes on cigarettes.

2. The original cost of computer hardware and software purchased within two years of the receipt or payment therefore, provided that the licensee was contractually

obligated at the time of the purchase to resell such property to a federal or state government entity and which was, in fact, sold to such federal or state government agency in accordance with the terms of the original contract obligation.

3. Receipts derived from the sale of lottery tickets in accordance with the State Lottery Law, except that compensation actually paid to a licensed sales agent of the Virginia State Lottery shall be included in taxable gross receipts.

4. Receipts derived from the license and admission taxes and pari-mutuel wagering pools pursuant to Virginia Code Sections 59.1-392 and 59.1-393.

5. Receipts of real estate brokers derived from real estate transactions to the extent that such amounts are paid to a real estate sales agent as a commission or any real estate sales transaction and the agent is subject to the subject to the business license tax on such receipts deducted by the broker. The broker claiming this deduction shall identify on its license application each agent to whom the excluded receipts have been paid, and the jurisdiction in the Commonwealth of Virginia to which the agent is subject to business license taxes.

6. Consideration for the sale of a motor vehicle attributable to the acceptance by a motor vehicle dealer of a trade-in provided that the value of the trade-in is clearly stated on the invoice of the purchaser.

7. Receipts for management, accounting, or administrative services provided on a group basis under a non-profit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provision of Chapter 3, Article 2 (Section 13.1-312 et seq.), Title 13.1, or a member or subsidiary or affiliated association thereof, to

other members of the same group. This deduction shall not apply to any receipts of any such corporation from outside the group.

8. Receipts or purchases by a corporation which is a member of an affiliated group of corporations from other members of the same affiliated group. This deduction shall not exempt an affiliated corporation from such license or other tax measured by receipts or purchases from outside the affiliated group provided that such receipts or purchases are attributable to goods manufactured or stored in the Commonwealth prior to their delivery to the non-affiliated person, company or corporation. This deduction also shall not apply to purchases from an affiliated corporation which are subsequently sold to a non-affiliated person, company, or corporation.

§4-1.12 Threshold Rates.

Any business may be subject to the tax at a rate not to exceed the rate set forth below for the classifications listed:

1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100 of gross receipts;
2. For retail sales, twenty cents per \$100 of gross receipts;
3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts; and
4. For repair, personal and business services, and all other businesses and occupations not specifically listed or expected in §58.1-3706, thirty-six cents per \$100 of gross receipts.

The above tax rates and rate thresholds for license taxes as indicated in §58.1-3706 do not apply to those items regarding taxation on the severance of coal, gas or oil as specified in §§58.1-3712, 58.1-3712.1 and 58.1-3713, or any other provision in Chapter 37 of Title 58.1 where a special taxing provision exists; for example, those taxes assessed upon the following taxpayers: (i) wholesalers, governed by §58.1-3716; (ii) public service companies, which shall be governed by §58.1-3731; (iii) carnivals, circuses, and speedways, which shall be governed by §58.1-3728; (iv) fortune-tellers, which shall be governed by §58.1-3726; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by §58.1-3717; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by §58.1-3729; (viii) savings institutions, and credit unions, which shall be governed by §58.1-3730; (ix) photographers, which shall be governed by §58.1-3727; and (x) direct sellers, which shall be governed by §58.1-3719.1.

§4-1.13 Additional assessments for refunds or credits.

When a license tax is computed upon estimated gross receipts, the estimate shall be subject to adjustment and the Town Clerk shall assess each person with any additional license tax found to be due after the end of a license year, and shall at the same time adjust the estimate for the then current year, until a full year of operation shall have been completed. In the case of over-estimation, the taxpayer shall be entitled to a refund or a credit of the amount of license tax in excess of such person's assessed liability.

§4-1.14 Calculation of gross receipts on cash or accrual basis.

The calculation of gross receipts for license tax purposes shall be on either a cash or accrual basis, provided, that the basis used shall coincide with the system of accounts used by the taxpayer and the method employed by the taxpayer for federal and state income tax purposes.

§4-1.15 Proration of license taxes.

If the taxpayer ceases to engage in the business, trade or profession within the Town during a year for which the license tax has already been paid, the taxpayer shall be entitled upon application to a refund for that portion of the license tax already paid, prorated on a monthly basis. In no case shall the proration reduce the amount of the license tax below the minimum tax prescribed by Section 12.

§4-1.16 Minimum License Tax.

Unless otherwise specifically provided, no license tax imposed under this ordinance shall be less than Fifty Dollars (\$50.00).

[Prior Amendment and Re-enactment July, 2012, FY'2012 Budget]

§4-1.17 Transfer of Licenses.

Licenses issued under the provisions of this ordinance, except as otherwise provided, may be transferred from one person to another or from one location to another; provided, that no such

transfer shall be valid unless and until notice in writing is given to the Town Clerk of the proposed transfer, which notice shall contain the name, trade name, if any, and address of the proposed transferee, the proposed new location, if any, as well as the time of the proposed transfer, and the Town Clerk may approve such transfer upon being satisfied of the good faith thereof.

§4-1.18 Compliance With Zoning Ordinance.

The Town Clerk shall not issue a license for conducting any business, profession, trade or occupation at a location where the conduct of such business, profession, trade or occupation is prohibited by the zoning ordinance of the Town, unless and until proper relief is granted by the Town Council.

§4-1.19 Payment of delinquent taxes prerequisite to issuance of license.

The Town Clerk shall not issue any license under the provisions of this ordinance to any person who shall be delinquent in the payment of any license tax.

§4-1.20 Display of License.

The license showing issuance of a license under this ordinance shall be displayed in a conspicuous place at the regular place of business or profession of the licensee, in order that the assessor or his authorized agent, or any law enforcement officer may inspect the same at any and all reasonable times. All licensees who have or maintain no regular place of business shall either carry with them on their person or have affixed or attached to their car, truck or other vehicle the

license or certificate and promptly display the same called upon by any law enforcement officer to do so.

§4-1.21 When license taxes payable; penalty for nonpayment.

A. All license taxes imposed by this chapter, except as herein otherwise provided, shall become due and payable on or before March 1 of each year.

B. In all cases where the person begins the business, profession, trade or occupation upon which a license tax is imposed under the provisions of this ordinance at any time after the first day of March, such tax shall become due and payable at the time when the person commences business. In accordance with §58.1-3703.1(2)(a) of the Code of Virginia, any person subject to the license tax that was issued a license for the preceding year must obtain a license prior to March 1st.

C. A penalty of ten percent (10%), or ten dollars, whichever is greater, provided that in no case shall the penalty exceed the amount of the tax, may be added to the tax for failure to file a return or application.

D. Interest on Omitted Tax, Late Payments and Installments. Interest shall be added, not earlier than the first day following the day such taxes are due. Interest shall be charged on late payments of tax from the due date until the date paid without regard to fault or other reason. Interest and penalty collected on an erroneous assessment of additional or omitted tax shall be refunded with interest from the date of payment or the due date, whichever is later. Interest shall be paid on refunds of BPOL taxes from the date of payment or due date, whichever is later and at the same rate charged under §58.1-3916. Interest shall not accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year in the case of a person not previously in business.

If a refund or late payment is made within thirty days from the date of the payment creating the refund, or the due date of the tax, whichever is later, interest shall not be paid.

E. Interest on Refunds. Interest shall be paid on any refund of tax erroneously paid, at a rate not to exceed the rate of imposed for delinquent taxes. Such interest shall be computed from the date such taxes were required to be paid or were actually paid, whichever is later.

[Prior Amendment & Re-Enactment 3/11/1999]

§4-1.22 Failure or refusal to obtain license with intent to defraud.

If the Town Clerk ascertains that any person has fraudulently, or with the intent to evade the payment of proper license taxes, failed or refused to obtain a proper license as required by the provisions of this ordinance, for any one or more of the three license tax years last past, or for the then current license tax year, and the liability therefor is ascertained, such omitted or additional license tax or taxes and the normal penalty prescribed in Section 1.17 of this title shall be assessed for each and every year of the three license tax years last past and for the current license tax year, for which such person was assessable, together with an additional penalty thereon of fifty percent (50%) of such unpaid license tax or taxes. Any person who willfully fails or refuses to file a return as required or who makes false statements with intent to defraud such returns shall be subject to criminal penalties not to exceed those prescribed by law for a (i) Class 3 misdemeanor if the amount of tax involved is \$1,000 or less, or (ii) a Class 1 misdemeanor if the amount of tax involved is more than \$1,000. Each day any person shall continue to violate the provisions of the law after the due date of the tax shall constitute a separate offense.

§4-1.23 Violations.

It shall be unlawful for any person to conduct a business or to engage in a profession, trade or occupation before procuring a license as required by law. Every person practicing or engaging in a licensable activity without a license shall be guilty of a misdemeanor.

§4-1.24 Investigation.

If the Town Clerk has reason to believe that any particular return or statement filed under this ordinance is incorrect, he or she shall cause an investigation of the taxpayer's books and records to be made and shall ascertain whether the person filing the return or statement in question has made a true and correct return or statement. To that end, the Town Clerk is expressly authorized and empowered when necessary to summon such person before him or her and require the production of all books and papers which the Clerk has reasonable cause to believe will throw any light upon the matter under investigation and shall also be empowered to make such other and further investigation and examination as may be deemed proper in order to determine accurately the proper return or statement to be made by such person. In such investigation and examination the Town Clerk is specifically authorized to place under oath the person whose return or statement is under investigation. Failure of such witness to answer such summons or refusal to testify on questions of such person's tax liability, or refusal to produce the specified records, books or papers as directed, shall constitute a misdemeanor, punishable under Section 1.19 of this title.

§4-1.25 Repeal.

All ordinances or parts of ordinances in conflict with this ordinance are repealed.

§4-1.26 Effect.

This ordinance shall become effective beginning October 8, 1987.

§4-1.27 Amusements generally.

Every person conducting or engaging in any of the following amusement occupations, businesses or trades shall pay for the privilege an annual tax of \$0.24 for each \$100 of gross receipts, except as provided:

Building devoted to general entertainment

Billiards or pool

Bowling alley

Miniature golf facilities

Movie theaters

Skating rinks

Other amusements and entertainments

[Prior Amendment & Re-Enactment 07/2012, FY'2012 Budget]

§4-1.28 Building or Savings & Loan associates and loan companies.

Every building or savings and loan association and firm or corporation licensed to do business under the State Uniform Small Loan Act having an office in the Town shall pay for the privilege of doing business an annual tax of Thirty Dollars (\$30).

Every industrial loan and agricultural credit association created pursuant to the Agricultural Credit Act of 1987 shall have imposed a tax of \$500.00.

§4-1.29 Financial, Real Estate and Professional Services.

A. Maximum rate. The maximum rate for local license taxes imposed on a person engaged in a financial, real estate or professional service is fifty-eight cents per one hundred dollars of gross receipts. A license fee also may be charged by the locality and the amount of the fee depends upon the locality and the amount of the fee depends upon the localities's population.

B. List of occupations. Those engaged in rendering financial services include, but are not limited to, the following:

Buying installment receivables

Chattel mortgage financing

Consumer financing

Credit card services

Factors

Financing accounts receivable

Industrial loan companies

Installment financing

Inventory financing

Loan or mortgage brokers

Loan or mortgage companies

Safety deposit box companies

Security and commodity brokers and services

Stockbroker

Working capital financing

C. Defined. Any person rendering a service for compensation as lessor, buyer, seller, agent or broker is providing a real estate service, unless the service is specifically provided for under another section of these Guidelines.

D. List of occupations. Those rendering real estate services include, but are not limited to, the following:

Appraiser of real estate

Escrow agents, real estate

Fiduciaries, real estate

Lessors of real property

Real estate agents, brokers and managers

Real estate selling agents

Rental agents for real estate

§4-1.30 Business services.

Every person conducting or engaging in any of the following business service occupations, businesses, or trades shall pay for the privilege an annual license tax of \$0.24 for each \$100 of gross receipts:

Job printer, printing shop, duplicating process; except for printers, or publishers of any newspapers

Laundering, cleaning, pressing, dyeing establishments; not including receipts collected from the use of coin operated machines which perform these functions

Hauling or transfer

Junk, old metals, like commodities, retail dealers

Packing, crating, shipping, hauling or moving goods or chattels for others

Parking lots and public garages

Storage

Commercial advertising

Other business service occupations

[Prior Amendment & Re-Enactment July, 2012, FY'2012 Budget]

§4-1.31 Contractors and contracting.

Every person conducting or engaging in contracting occupations, businesses, trades or callings shall be considered a contractor and shall pay an annual license tax of \$0.13 for each

\$100 of gross receipts. For the purposes of this Article, the meaning of the term “contractor” provided by Va. Code § 58.1-3714 (D) is incorporated by reference. The provisions of Va. Code § 58.1-3715 relating (i) to licensing exemptions, (ii) to licensing requirements for businesses located outside of the Town which do more than \$25,000.00 per year in the Town and (iii) to credits for business done in other counties, cities and towns, in which a similar tax is paid are incorporated by reference.

[Prior Amendment & Re-enactment April 9, 2015]

§4-1.32 Manufacturers, millers or processors.

Every person conducting or engaging in any of the following manufacturing, milling or processing occupations, businesses or trades, not including manufactures who make and sell goods at wholesale and at their places of business, shall pay for privilege an annual license tax of \$0.13 for each \$100.00 of gross receipts:

Asphalt, brick or other such products

Barrels or other wood products

Beds or related articles

Bakery products

Chemical products

Concrete, cement or cinder blocks or concrete products

Fertilizers

Flour, meal or other grain products

Food for livestock

Ice cream or like products

Steel, iron, and metal products

Paints

Pasteurizing and bottling of milk

Soft drinks

Weaving apparel

Wood products

Other manufacturers and processors

[Prior Amendment & Re-Enactment July, 2012, FY'2012 Budget]

§4-1.33 Personal services.

Every person conducting or engaging in any of the following personal service occupations, businesses or trades shall pay for the privilege an annual license tax of \$0.13 for each \$100 of gross receipts:

Barber shops

Beauty shops

Hotels, and rooming and boarding houses

Motels

Undertakers

Dental or medical laboratory

Exterminating services

Furnishing house cleaning services

*Photographers with a regularly established place of business

Renting any kind of tangible personal property

*Other personal service occupations

*Photographers without a regular place of business in the Commonwealth shall pay an annual license tax of \$10.00

*Fortune-tellers, clairvoyants and practitioners of palmistry shall pay an annual license tax of \$1,000.00

[Prior Amendment & Re-Enactment July, 2012, FY'2012 Budget]

§4-1.34 Professional services.

Every person engaging in any of the following professional occupations shall pay for the privilege an annual license tax of \$0.35 for each \$100 of gross receipts from the occupation during the preceding calendar year:

Public accountant

Auctioneer

Advertising agent or firm

Architect

Attorney-at-law

Broker

Engineer

Collection agent

Commission merchant

Dentist

Land agent

Optometrist

Physician

Public stenographer

Realtors

Sales agents

Surveyor

Veterinarian

Other professional occupations

§4-1.35 Repair services.

Every person conducting or engaging in any of the following repair service occupations, businesses, or trades shall pay for the privilege an annual license tax of \$0.13 for each \$100 of gross receipts:

Business and office machines repair

Auto repair, engine repair of any type

Clothes, carpets

Furniture

Guns

Machine shop, blacksmith shop

Electrical appliances

Farm machinery

Tools

Tire repair

Other repair services not otherwise taxed

[Prior Amendment & Re-Enactment July, 2012, FY'2012 Budget]

§4-1.36 Retail merchants.

Every person conducting or engaging in any of the following retail merchandising occupations, businesses, or trades shall pay for the privilege an annual license tax of \$0.13 for each \$100 of gross receipts from the business during the preceding calendar year:

Auto accessory, tire and battery

Antiques

Auto sales

Bakeries

Books

Building materials

Candy

Cigar, tobacco

Dairy products

Department stores

Drug

Clothes

Farm equipment

Florist

Fruit or vegetable markets, not including sellers of farm or domestic products outside of regular markets when these products are produced by the person offering them for sale

Fuel

Furniture

Garden supplies

General stores

Gift, souvenir

Groceries

Hardware

Livestock dealer

Luggage

Lumber goods

Meat market

Optical

Paint, wallpaper

Photographic supply and equipment

Radio or household appliances

Restaurants, eating establishments

Secondhand stores, other than junk

Service stations

Used cars

Other retail stores or retail merchants

[Prior Amendment & Re-Enactment July, 2012, FY'2012 Budget]

§4-1.37 Wholesale merchants.

Every person conducting or engaging in any of the following wholesale merchandising occupations, businesses, or trades who has a definite place of businesses except for (1) those who sell, and at the time of such sale, deliver goods to retail merchants; (2) distributors and vendors of motor fuels and petroleum products; (3) farmers' cooperative associates; (4) vendors of seafood caught by him or her; (5) manufacturers whose intangible personal property is taxed by the State who sells only goods manufactured by him, shall pay for the privilege an annual license tax of \$0.05 per \$100 of gross receipts:

Automotive

Chemicals

Clothing

Coal

Drugs

Farm products

Electrical

Groceries

Hardware

Machinery

Paper products

Waste materials

Other wholesale merchants

[Prior Amendment & Re-Enactment June, 1991, FY'92 Budget]

Direct Sellers. Any person who resides in Timberville and is engaged in the business of direct seller at retail shall pay a tax of \$0.20 per \$100 on the gross receipts from the business, provided that the gross receipts for the year exceed \$4,000.00.

§4-1.38 Itinerant Merchants.

Any person who engages in, does, or transacts any temporary or transient business, other than a dealer in precious metals, in any county, city or town and who, for the purpose of carrying on such business, occupies any location for a period of less than one year shall be deemed an itinerant merchant and the tax shall be \$50.

[Prior Amendment & Re-Enactment 1/9/97]

§4-1.39 Exemptions.

The following persons are exempt from the tax imposed by this ordinance:

1. Public service corporation, except as provided in 4.10.

2. A manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacturer;
3. A person engaged in the business of severing mineral from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in Section 58.1-3712 and 58.1-3713.
4. A person performing in a show or exhibition for charity or other benevolent purposes, or exhibitions of volunteer fire companies, whether an admission is charged or not.
5. The sale of goods for charitable or benevolent purposes by a company, association, club, person, or a corporation, in the business of selling such goods.
6. It is the intent and meaning of this section that every company, association, person, or corporation in the business of selling goods for personal or corporate gain, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the authority of this section unless such tax is waived by action of the Town Council.

§4-1.40 Appeal to Assessing Official.

Any person assessed with a tax may apply, within ninety days from the date of such Assessment, to the assessor for a correction of the assessment. The application must sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relied, and any other facts relevant to the taxpayer's contention. The assessor may require submission of additional information and documents, further audit, holding a conference with the taxpayer or other evidence deemed necessary for a

fair determination of the application. The assessor will undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. If the taxpayer is dissatisfied with the local assessing official's final decision, the taxpayer within 90 days of the date of the final local decision, may appeal to the Tax Commissioner who will make a determination of the issues raised by the taxpayer.

§4-1.41 Collection Stayed Pending Resolution of Appeal.

Provided a timely and completely filed appeal is made, collection activity shall be suspended until a final determination is issued, unless collection is deemed to be jeopardized by delay. The limitation on collection of local taxes shall be tolled during the period of time collection activity is suspended pending resolution of an appeal.

§4-1.42 Erroneous Assessments; Refunds; Prorata Refund of Prepaid Taxes.

The assessor shall certify to the collector any instances in which an assessment or portion thereof is erroneous. Upon receipt of such certification, the collector shall make a refund to the taxpayer, if the tax together with any penalties and interest thereof has been paid; or abate the assessment or portion of the assessment, if the tax together with any penalties and interest thereof remains unpaid. If any person liable for a refund is indebted to the county or any state constitutional office of the county, the refund, or so much thereof as is necessary, shall first be applied to such indebtedness.

A licensee which has permanently ceased to engage in the licensed business shall be liable for tax only with respect to the months or portions of a month before permanently ceasing to conduct the licensed business. The tax shall be computed by multiplying the previous year's gross receipts by a fraction, the numerator of which is the number of months, or fractions thereof, of the current tax year prior to permanently ceasing business, and the denominator of which is the number of months, or fractions thereof, of the preceding tax year during which it engaged in the licensed business. In no event shall a refund be required for any part of a flat fee or minimum flat tax. A refund of tax paid for the current tax year, or any abatement of tax owed for the current tax year shall be made in the same manner as for an erroneous assessment.

§4-1.43 Rulings by Assessing Official.

Any taxpayer may request a binding written ruling regarding the application of the tax to a specific situation from the assessor on which it can rely, for that jurisdiction only, to the extent the facts are adequately and correctly presented. Any person requesting such a ruling must provide all the relevant facts for the situation and may present its rationale for the basis of its interpretation of the law most favorable to it. Any misrepresentation or change in the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling becomes invalid if changed by an amendment to the law, a court decision, or guidelines issued by the Department of Taxation. However, any person who acts on a written ruling which later becomes invalid will have acted in good faith during the period in which such ruling is in effect.

§4-1.44 Audits.

Every person who is assessable with a license tax shall keep sufficient records to enable the local official to verify the correctness of the tax paid for the current year and the three preceding tax years; and to enable the local official to ascertain what is the current amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the local official in order to allow the locality to establish that a particular receipt is directly attributable to the taxpayer privilege exercised within the locality.

The locality shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained therein, in the event the records are maintained outside the local jurisdiction, the audit may be conducted where the records are physically located or the appropriate books and records may be sent to the local taxing office.

§4-1.45 Period for Assessing Omitted Tax.

The tax may be assessed within three years after the last day of the tax year for which the taxes were assessed.

§4-1.46 Period for Amending Return or Correcting Assessment.

An amended return may be filed or a refund requested within three years after the last day of the tax year for which the taxes are assessed.

§4-1.47 Extension of Statute of Limitations.

The local taxing official and the taxpayer may mutually agree in writing to extend the statute of limitations set by law for completing an audit and assessing the amount of tax owed. An extension of time to assess tax shall also extend the period to file an amended return claiming a refund.

§4-1.48 Period for Collecting Assessments.

Collection of the tax shall only be enforceable for five years following December 31 of the year for which such taxes were assessed. However, in the event collection activity is stayed pending the resolution of a taxpayer's appeal, the period for collecting the assessment shall be tolled until a final determination is issued by the local official.

§4-1.49 Period for Seeking a Judicial Remedy.

If all assessed taxes, penalties and interest have been paid, a taxpayer may apply to the court to correct an erroneous assessment within three years from the last day of the tax year for which any such assessment is made, or within one year after the date of the assessment, or within one year after a final determination by the local taxing official of an appeal has been issued, whichever is later.

ARTICLE II – UTILITY TAX ORDINANCE

Originally Adopted July 13, 1972

Prior Amendment and Re-Enactment October 12, 2000

AN ORDINANCE IMPOSTING UTILITY TAX ON PURCHASERS OF UTILITY SERVICES, INCLUDING TELEPHONE, ELECTRIC, AND NATURAL GAS SERVICES, TO BE COLLECTED BY THE PERSON OR FIRM FURNISHING THE SERVICE AND PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.

§4-2.1 Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) Consumer. The term “consumer” shall mean every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity or natural gas services in this jurisdiction.

(b) Commercial or Industrial User. The term “commercial or industrial user” shall mean the owner or tenant of property used for commercial or industrial purposes, including apartment buildings, who pays for utility service for such property.

(c) CCF. The term “CCF” means the volume of gas at standard pressure and temperature in units of 100 cubic feet.

(d) Kilowatt hours (kwh) delivered. The term “kilowatt hours delivered” mean 1000 watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in Virginia Code §56-594, it means kilowatt hours supplied from the electric grid to such

customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

(e) Local Telephone Service. The term “local telephone service” shall mean any service taxable as local telephone service under provisions of the Internal Revenue Code of 1954, as amended, relating to federal communications taxes, as such provisions were in force and effect on December 31, 1971.

(f) Person. The term “person” shall include individuals, firms, partnerships, associations, corporations, and combinations of individuals of whatever form and character.

(g) Pipeline Distribution Company. The term “pipeline distribution company” means a person, other than a pipeline transmissions company which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

(h) Residential User. The term “residential user” shall mean the owner or tenant of private residential property who pays for utility service in or for such property.

(i) Seller. The term “seller” shall include every person, whether a public service corporation, or a municipality, who sells or furnishes a utility service.

(j) Service provider. The term “service provider” means a person who delivers electricity to a consumer or gas utility or pipeline distribution company which delivers natural gas to a consumer.

(k) Utility service. The term “utility service” shall include local telephone, electricity, and natural gas service furnished to the Town.

§4-2.2 Imposition; rate; collection.

A. Electric Utility Consumer's Tax. (Effective until January 1, 2001) There is imposed and levied by the Town, upon each purchaser of a utility service, a tax in the amount of 20% of the charge, exclusive of any federal tax thereon, made by the seller against the purchaser with respect for each utility service, which tax in every case shall be collected by the seller from the purchaser and shall be paid by the purchaser to the seller for the use of the Town at the time of purchase price or payment for such charge shall become due and payable under the agreement between the purchaser and the seller; provided, however, that in case any monthly bill of a residential user shall exceed ten dollars (\$10), no tax shall be computed on such excess, and in case of any monthly bill of a commercial user shall exceed one hundred dollars (\$100), no tax shall be computed on such excess. In case bills are submitted by any seller for two months service, no tax shall be computed on such of said bill as shall exceed twenty dollars (\$20) for a residential user or two hundred dollars (\$200) for a commercial or industrial user.

A. Electricity Utility Consumer's Tax. (Effective after January 1, 2001) Effective with the first bill for electric energy rendered for meter readings on or after January 1, 2001, the rate of tax on the electric energy delivered to the user shall be as follows:

1) ***Residential Users:*** \$0.014985 per kilowatt hours (kwh) delivered including customer charges with a minimum tax of \$1.40 per month and a maximum tax of \$2.00 per month.

2) ***Commercial or Industrial Users:*** \$0.014293 per kilowatt hours (kwh) delivered including customer charges with a minimum tax of \$2.29 per month and a maximum tax of \$20.00 per month.

B. Natural Gas Utility Consumer's Tax. Effective with the first bill for natural gas delivered on or after January 1, 2001, the rate of tax on the natural gas delivered to the user shall be as follows:

1) ***Residential Users:*** The tax on residential customers of natural shall be \$2.00 per month.

2) ***Commercial and Industrial Users:*** \$0.0520 per CCF delivered monthly including customer charges with a minimum tax of \$4.65 per month and a maximum tax of \$20.00 per month.

C. Utility License Tax. There is hereby imposed and levied by the Town upon each seller of a utility service a tax in the amount of .005% of the gross receipts collected, exclusive of any federal tax thereon, with respect to each utility service, which tax in every case shall be collected from the seller and shall be paid by the seller for the use of the Town. Such charge shall become due and payable as set for in §4-2.3 of this ordinance. The tax imposed and levied by Section 4-2.3(B) becomes effective on or after July 1, 1990.

[Prior Amendment & Re-Enactment October 12, 2000]

§4-2.3 Collection, remission, etc., generally; report of collections, etc.

A. Utility Consumer's Tax. It shall be the duty of every seller in acting as the tax collecting agent for the Town to collect from the purchaser, for the use of the Town, the tax imposed and levied by Section 4-2.2(A) of this title at the time of collecting the purchase price charged for a utility service. The taxes collected during each calendar month shall be remitted by each seller to the Town Treasurer on or before the last day of the first calendar month thereafter,

together with the name and address of any purchaser who has refused to pay his tax. The required reports shall be in the form prescribed by the Town Treasurer. The tax imposed and levied by Section 4-2.2(A) with respect to the purchaser of any electricity service shall become effective on bills rendered on meter readings on and after October 1, 1972, in the case of meters read on a monthly basis and on and after November 1, 1972, in the case of meters read on a bi-monthly basis, and with respect to local telephone service on charges first appearing on the bills rendered on September 1, 1972, and thereafter.

B. Utility License Tax. It shall be the duty of every seller to remit to the Town, for the use of the Town, the tax imposed and levied by Section 4-2.2(B). Effective until January 1, 1991, the taxes collected during each calendar quarter shall be remitted by each seller to the Town on or before the last day of the first calendar month thereafter, the first payment under the statute being due October 31, 1990. All required reports shall be in the form prescribed by the Town Treasurer. Effective January, 1 1991, the taxes collected during each year shall be remitted by each seller to the Town Treasurer on or before January 31 of the following year, the first payment under this statute being due January 31, 1992. The required report shall be in the form prescribed by the Town Treasurer.

[Originally Adopted & Enacted January 10, 1991]

§4-2.4 Seller's records.

Each seller shall keep complete records showing all purchases in the Town, the records shall show the price charged against each purchaser with respect to each purchase, the date of the purchase, the date of payment and the amount of tax imposed. Such record shall be kept open for

inspection by the duly authorized agents of the Town at reasonable times, and these agents of the Town shall have the right, power and authority to make transcripts of the records during such times as they may desire.

§4-2.5 Exceptions as to governmental agencies.

The United States of America, this state and the political subdivisions, boards, commissions, and authorities thereof are hereby exempted from the payment of the tax imposed and levied by this article with respect to the purchase of utility services used by such governmental agencies.

§4-2.6 Exception as to local messages by coin-operated telephones.

The tax imposed and levied by Section 2.2 of this title with respect to local exchange telephone service shall apply to all charges made for local exchange telephone service, except local messages which are paid for by inserting coins in coin-operated telephones.

§4-2.7 Exception as to sales of electric utility service for resale.

The tax imposed and levied by Section 2.2 of this title shall not apply to sales of electricity service for resale.

§4-2.8 Exception as to public safety agencies.

The tax imposed and levied by Section 2.2 of this title shall not apply to the functional divisions of public agencies which provide firefighting, police, medical, or other emergency services or to a private entity which provides such services on a voluntary basis.

§4-2.9 Failure, etc., to pay tax imposed; separate offenses.

Any purchaser failing, refusing or neglecting to pay the tax imposed or levied by Section 2.2 of this title and any seller violating the provisions of this article and any officer, agent or employee of any seller violating the provisions of this article shall upon conviction, be subject to a fine of not more than one hundred dollars (\$100). Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense.

ARTICLE III. – BANK FRANCHISE TAX ORDINANCE

Originally Adopted October 8, 1987

§4-3.1 Definitions.

For the purpose of this ordinance, the following words shall have the meanings ascribed to them by this section:

(a) “Bank” shall be as defined in Section 58.1-1201 of the Code of Virginia, 1950, as amended.

(b) “Net Capital” shall mean a bank’s net capital computed pursuant to Section 58.1-1205 of the Code of Virginia, 1950, as amended.

§4-3.2 Penalty upon bank for failure to comply with ordinance.

Any bank which shall fail or neglect to comply with any provision of this ordinance shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), which fine shall be recovered upon motion, after (5) days notice in the Circuit Court of this Town. The motion shall be in the name of the Commonwealth and shall be presented by the attorney for the Commonwealth of this locality.

§4-3.3 Effective date of ordinance.

The provisions of this ordinance shall be effective for the year beginning January 1, 1988.

The enactment of this ordinance shall serve to repeal any previous Bank Franchise Tax ordinance.

§4-3.4 Imposition of Town bank franchise tax.

A. Pursuant to the provisions of Chapter 12 of Title 58 of the Code of Virginia, there is hereby imposed upon each bank located within the boundaries of the Town a tax on every \$100 of the net capital equaling eighty percentum of the state rate of franchise tax set forth in Section 58.1-1204 of the Code of Virginia, 1950, as amended.

B. In the event that any bank located within the boundaries of this Town is not the principal office but is a branch extension or affiliate of the principal office, the tax upon such branch shall be apportioned as provided by Section 58.1-1211 of the Code of Virginia, 1950, as amended.

§4-3.5 Filing of return and payment of tax.

A. On or after the first day of January of each year, but not later than March 1 of any such year, all banks whose principal offices are located within this Town shall prepare and file with the Town Treasurer a tax return and other information as provided by Section 58.1-1207 of the Code of Virginia, 1950, as amended, in duplicate which shall set forth the tax on net capital computed pursuant to Chapter 12 of Title 58 of the Code of Virginia. The Town Treasurer shall certify a copy of such filing of the bank's return and schedule and shall forthwith transmit such certified copy to the State Department of Taxation.

B. Each bank, on or before the first day of June of each year, shall pay into the Treasurer's Office of this Town all taxes imposed pursuant to this ordinance.

ARTICLE IV. – REAL ESTATE TAX RELIEF FOR ELDERLY AND DISABLED

PERSONS

§4-4.1 Definitions.

Definitions. For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) *Dwelling.* The word “dwelling” as used herein shall be defined as a home constructed upon real estate owned by the qualified property owner or a mobile home, whether or not such real estate on which such mobile home is located is owned by the qualified property owner.

(b) *Permanently and totally disabled.* A person is permanently and totally disabled if he is so certified as required in subsection (b) of section 4-4.4(b) and is found by the commissioner of the revenue to be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person’s life.

§4-4.2 Exemption Authorized.

Real estate tax and mobile home exemption is provided for qualified property owners who are not less than sixty-five (65) years of age or determined to be permanently and totally disabled as provided in section 4-4.1(b) of this article and who are eligible according to the terms of this article. Persons qualifying for exemption are deemed to be bearing an extraordinary real estate tax burden in relation to their income and financial worth.

§4-4.3 Administration of Exemption.

The exemption shall be administered by the general provisions contained in this article. The Town Manager is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations in conformity with the general provisions of this article, including the requirements of answers under oath, as may be reasonably necessary to determine qualifications for exemption as specified by this article. The Town Manager may require the production of certified tax returns and appraisal reports to establish income or financial worth.

§4-4.4 Requirements for Exemption.

Exemption shall be granted to persons subject to the following provisions:

- (a) The title of the property for which exemption is claimed is held on January first of the taxable year, by the person claiming exemption;
- (b) The person claiming exemption must, on December thirty-first of the year immediately preceding the taxable year, be sixty-five (65) years of age or older or be permanently and totally disabled as provided in section 4-4.1(b) of this article, and such disability must be certified by the social security administration, or if such person is not eligible for social security, such person must provide a sworn affidavit by two (2) medical doctors licensed to practice medicine in the state, to the effect that such person is permanently and totally disabled, as defined in section 4-4.1 of this article;
- (c) The dwelling on the property for which exemption is claimed must be occupied as the sole dwelling of the person claiming exemption;

(d) The total combined income during the immediately preceding calendar year from all sources of the owner or owners of the dwelling living therein, and of the owners' relatives living in the dwelling shall not exceed twenty-three thousand two hundred fifty dollars (\$23,250.00); provided, that the first six thousand five hundred dollars (\$6,500.00) of income of each relative, other than spouse, of the owner or owners, who is living in the dwelling shall not be included in such total;

(e) The net combined financial worth, including equitable interests, as of the thirty-first day of December of the immediately preceding calendar year, of the owners, and of the spouse of the owner, excluding the value of the dwelling and the land, not exceeding one acre, upon which it is situated shall not exceed fifty-thousand dollars (\$50,000.00).

§4-4.5 Claiming Exemption.

(a) Annually, after January 1 but on or before April 1, of the taxable year, the person claiming an exemption must file a real estate tax exemption affidavit with the Town Clerk. Nothing in this article shall be construed to permit more than one (1) exemption even though a person may be both sixty-five (65) years of age or older and disabled. The Town Council may adopt a procedure for late filing by first-time applicants or for hardship cases; said late filing shall be made within thirty (30) days of the deadline set forth herein.

(b) The affidavit shall set forth, in a manner prescribed by the Town Council, the location, assessed value and tax on the property and the names of the related persons occupying the dwelling for which exemption is claimed, and that their combined income from all sources and the total combined net worth of the person claiming the exemption does not exceed the limits prescribed in subsections 4-4.4(d) and (e) above, respectively.

(c) If, after audit and investigation, the commissioner of the revenue determines that the person is qualified for exemption, the commissioner shall issue to the person a certificate which shall show the amount of the exemption from the claimant's real estate tax liability.

(d) Changes in respect to income, financial worth, ownership of property or other factors occurring during the taxable year for which the affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided herein, or by any ordinance adopted hereafter, shall reduce or nullify any exemption for the then current taxable year and the taxable year immediately following.

§4-4.6 Amount of Exemption.

Person qualifying for and claiming exemption shall be relieved of that portion of the real estate tax levied on the qualifying dwelling and land in the amount calculated in accordance with the following schedule:

<i>If gross combined income as described in subsection 4-4.4(d) above is:</i>	<i>Tax exemption or relief that may be claimed is:</i>
\$11,250.00 or less	80 percent
\$11,251.00 to \$15,250.00	60 percent
\$15,251.00 to \$19,250.00	40 percent
\$19,251.00 to \$23,250.00	20 percent
Over \$23,250.00	0 percent

to be adjusted as follows:

<i>If total combined financial worth as described in section 4-4.4(e) above is:</i>	<i>Above tax exemption or relief is reduced by:</i>
\$35,000 or less	0 percent
\$35,001 to \$40,000	20 percent
\$40,001 to \$45,000	30 percent
\$45,001 to \$50,000	50 percent

and resultant exemption to be allowed is:

<i>Range of Income</i>		<i>Net worth range</i>		
	\$0 to \$35,000	\$35,001 to \$40,000	\$40,001 to \$45,000	\$45,001 to \$50,000
0 to \$11,250	80%	64%	56%	40%
\$11,251 to \$15,250	60%	48%	42%	30%
\$15,251 to \$19,250	40%	32%	28%	20%
\$19,251 to \$23,250	20%	16%	14%	10%

§4-4.7 Penalty for falsely claiming exemption.

Any person who shall falsely claim the exemption provided for in this article shall pay to the treasurer one hundred ten (110) percent of such exemption. In addition, any person who shall falsely claim exemption provided for in this article shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or confinement in jail not exceeding thirty (30) days, either or both.

[Originally Adopted and Enacted October 9, 2008]

ARTICLE V. - CIGARETTE TAX

§4-5.1 Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section.

Carton shall mean any container, regardless of material used in its construction, in which ten packages of 20 cigarettes are placed.

Cigarette shall mean and include any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

Dealer shall mean and include every manufacturer's representative, self wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the town.

Package shall mean and include any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily a package contains 20 cigarettes; however, "package" includes those containers in which fewer or more than 20 cigarettes are placed.

Person shall mean and include any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation shall include all the officers and directors thereof.

Place of business shall mean and include any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the town.

Registered agent shall mean and include every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this article.

Retail dealer shall mean and include every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the town to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale within the town of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers, or deals in cigarettes for the purpose of sale within the town to the ultimate consumer, who is not licensed as a wholesaler, or vending machine operator.

Sale or sell shall mean and include every act or transaction, regardless of the method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices or a criminal or tortuous act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the town from a dealer as herein defined to any other person for a consideration.

Stamp shall mean a small gummed piece of paper or decal used to evidence provision for payment of the tax as authorized by the board required to be affixed to every package of cigarettes sold or used within the town.

Store or storage shall mean and include the keeping or retention of cigarettes in this town for any purpose except sale in the regular course of business.

Town shall mean Town of Timberville, Virginia.

Use shall mean and include the exercise of any right or power over any cigarettes or packages or cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

User shall mean any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

§4-5.2 Levy and Rate.

In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the town upon every person who sells or uses cigarettes within the town from and after the effective date of this article an excise tax equivalent to \$.25 for each package containing 20 cigarettes or less. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette package sold or

used within the town shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes.

[Prior Amendment & Re-Enactment June, 2018, FY'2018 Budget]

§4-5.3 Delegation of administration.

(A) The town treasurer is hereby delegated the authority to administer all provisions of this article.

(B) The town treasurer is authorized to promulgate such rules and regulations, as it deems appropriate, governing:

- 1) The display of cigarette stamps in vending machines;
- 2) The placement of tax liens against property of taxpayers hereunder;
- 3) The extending of varying discount rates;
- 4) The establishing of different classes of taxpayers or those required to collect and remit the tax;
- 5) The requirements concerning keeping and production of records;
- 6) The administrative and jeopardy assessment of tax where reasonably justified;
- 7) The required notice to authorities of sale of taxpayer's business;
- 8) The audit requirements and authority;
- 9) The criteria for authority of distributors and others to possess untaxed cigarettes;
- 10) Any and all powers granted by the provisions of the Code of Virginia of 1950, as amended, or necessarily implied therefrom.

(C) The town treasurer, is authorized to:

- 1) Issue a common revenue stamp;
- 2) Bring appropriate court action in its own name where necessary to enforce payment of the cigarette taxes or penalties;
- 3) Provide cigarette tax agents and the necessary enforcement supplies and equipment needed to effectively enforce the cigarette tax ordinance.

§4-5.4 Methods of collection.

(A) The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the town to carry out the provisions of this article. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax and report separately for packages of 20 cigarettes on forms prescribed for this purpose by the town:

- 1) The quantity of town-stamped cigarettes sold or delivered to:
 - a. Each registered agent appointed by the town for which no tax was collected;
 - b. Each manufacturer's representative; and
 - c. Each separate person and place of business within the town during the preceding calendar or fiscal month; and
- 2) The quantity of town stamps on hand, both affixed and unaffixed on the first day and the last day of the preceding calendar or fiscal month and the quantity, of town stamps or town stamped cigarettes received during the preceding calendar or fiscal month; and

- 3) The quantity of cigarettes on hand to which the town stamp had not been affixed of the first and last day of the preceding calendar or fiscal month and the quantity of cigarettes received during the preceding calendar or fiscal month to which the town stamp had not been affixed; and
- 4) Such further information as the administrator for the town may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.

(B) Each dealer or other person liable for the tax shall file such reports with the town and pay the tax due to the town between the first and twentieth day after the close of each calendar or fiscal month, and shall furnish a copy of any cigarette tax reports submitted to the Virginia Department of Taxation for the previous month.

(C) When, upon examination and audit of any invoices, records, books, cancelled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the town of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him unpaid and impose a penalty of ten percent and interest of ten percent per annum of the gross tax due.

(D) When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the town shall administratively assess the tax due and unpaid and impose a penalty of 50 percent and interest of ten percent per annum of the gross tax due.

(E) The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the town stamp has been affixed thereto prior to offering them for sale.

(F) Any dealer or other person liable for the tax who shall receive cigarettes not bearing the town stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the town stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any dealer or other person liable for the tax who has notified the town that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the town) without affixing the stamps required by this article. Any such interstate or intrastate stock shall be kept entirely separate and apart from the town-stamped stock, in such a manner as to prevent the co-mingling of the interstate or intrastate stock with the town stock. Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost, whether by negligence, theft, or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

(G) It shall also be the duty of each dealer or other person liable for the tax and he is hereby required to maintain and keep for a period of three years, not including the current calendar year, records of cigarettes received, sold, stored, possessed, transferred or handled by him in any manner, whatsoever, whether the same were stamped or unstamped, to make all such records available for audit, inspection and examination and to make available at all reasonable times the

means, facilities and opportunity for making such audit, inspection or examination upon demand of the town.

§4-5.6 Registered agents.

(A) Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within or into the town shall first make application to the town to qualify as a registered agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the town deems necessary. Any applicant whose place of business is outside the town shall automatically, by filing his application, submit himself to the town's legal jurisdiction and appoint the town treasurer as his agent for any service of lawful process.

Upon receipt of the properly completed application, the town shall issue to said applicant a permit to qualify him as a registered agent to purchase, sell, use, store, possess, distribute or transport within or into the town, town-stamped cigarettes.

(B) After adoption of this article, dealers or other persons liable for that tax who shall sell, use, store, possess, distribute or transport tobacco products within or into the town shall be allowed 30 days to become qualified as a registered agent.

§4-5.7 Notice of intention of retail dealers.

(A) Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the town shall notify the town in writing, of the supplier

of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business. Possession of a Virginia State Retail Sales and Use Tax Certificate and a Virginia State Retail Tobacco License and, where applicable, a retail business license issued by the town for each separate place of business by a retail dealer shall be considered sufficient written notification to the town.

(B) No retail dealer, as defined herein, who shall have complied with the provisions of the article and who purchases only tax-paid town-stamped cigarettes for each separate place of business shall be required to qualify as a registered agent.

§4-5.8 Sale of cigarettes in vending machines; contraband.

(A) Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the town. Any vending machine located within the town containing cigarettes placed so as to not allow visual inspection of the town stamp through the viewing area as provided for the vending machine manufacturer shall be in violation of this article.

(B) Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the town. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

(C) In lieu of seizure, the town may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

(D) All cigarette vending machines shall be plainly marked with the name, address and telephone number of the owner of said machine.

§4-5.9 Illegal acts.

(A) It shall be unlawful and a violation of the article for any dealer or other person liable for the tax:

1) To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed under him under the provisions of the article or to fail or refuse to obey any lawful order which may be issued under this article; or

2) To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or

3) To sell, offer for sale, or authorize or approve the sale of any cigarettes upon which the town stamp has not been affixed; or

4) To possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than 60 packages upon which the town stamp has not been affixed; or

5) To transport, authorize or approve the transportation of any cigarettes in quantities of more than 60 packages into or within the town upon which the town stamp has not been affixed, if they are:

a. Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

b. Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or

c. Accompanied by a bill of lading or other document indicating:

i. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of the jurisdiction; or

ii. A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate, a Virginia retail tobacco license and, where applicable, or a business license and a retail tobacco license issued by the local jurisdiction of destination; or

6) To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or

7) To remove from any package any stamp with intent to use or cause the same to be used after same has already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had therefore been used for evidence of the payment of any tax prescribed by this article or to sell, or offer to sell, any stamp provided for herein.

§4-5.10 Jeopardy assessment.

If the town determines that the collection of any tax or any amount of tax required to be collected and paid under this article will be jeopardized by delay, the town shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the town may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this article for filing a return and paying the tax has expired.

§4-5.11 Erroneous assessment: notices and hearings in the event of sealing of vending machines or seizure of contraband property.

(A) Any person assessed by the town with a cigarette tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under

processes of this article who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the town for a correction of such assessment and the return of such property seized or sealed.

(B) Where holders of property interest in cigarettes, vending machines or other property known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within 24 hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

(C) Such hearing shall be requested within ten days of the notice of such assessment, seizure, or sealing and shall set forth the reasons why said tax, penalties and interest and cigarettes, vending machines or other property should be returned or released. Within five days after receipt of such hearing request the town shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within 15 days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten days from first notice to the petitioner of such seizure or sealing. Within five days after the hearing, the town shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

(D) Appropriate relief shall be given by the town if it is proven by the preponderance of the evidence that the illegal sale or use of such seized cigarettes or vending machine or other

property was not intentional on the part of the petitioner, and that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the town is satisfied that the tax was erroneously assessed, it shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the town may within 30 days of the date of said decision, appeal such decision to the appropriate court in the jurisdiction where the seizure or sealing occurred.

§4-5.12 Disposal of seized property.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the town after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed.

(Ord. of 9-3-2002)

§4-5.13 Extensions.

The town, upon a finding of good cause may grant an extension of time to file a tax report upon written application therefore, until the end of the calendar or fiscal month in which any tax

report is due hereunder, or for a period not exceeding 30 days. In no case shall a request for an extension of time to file a tax report be granted by the town when such request is not received within the due date for filing such tax report. No interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension. Where such extension is granted beyond the end of the calendar or fiscal month in which any tax report is due, hereunder, interest on the tax at a rate of ten percent per annum shall be charged.

§4-5.14 Penalty for violation of article.

Any persons violating any of the provisions of this article shall be guilty of a class I misdemeanor.

§4-5.15 Each violation a separate offense.

The sale of any quantity or the use, possession, storage or transportation of more than 60 packages of cigarettes upon which the town stamp has not been affixed shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

§4-5.16 Severability.

If any section, phrase, or part of this article should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the article, and every remaining section, clause, phrase or part thereof shall continue in full force and effect.

ARTICLE VI. – TOWN LICENSE FEE

§4-6.1 Town License Fee Assessed.

Pursuant to Section 46.2-752 of the Virginia code (1950), as amended, there is hereby assessed and charged a license fee, to be paid by the owner, on each motor vehicle, trailer and semi-trailer for which a state license plate is required and which is normally garaged, stored or parked in the Town of Timberville. If it cannot be determined where a motor vehicle, trailer or semi-trailer is normally garaged, stored or parked, the situs shall be the domicile of the owner. In the event the owner of a motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile.

As used in this Article, all terms such as “motor vehicle”, “trailer” and “semi-trailer” are as defined in Title 46.2 of the Code of Virginia.

[Originally Adopted & Enacted October 14, 2010]

§4-6.2 Amount of License Fee Assessed.

- A. Upon each motor vehicle there is assessed a license fee of twenty dollars (\$20.00).
- B. Upon each motorcycle there is assessed a license fee of seven dollars and fifty cents (\$7.50).
- C. Upon each trailer or semi-trailer having a registered gross weight of one thousand five hundred (1,500) pounds or less there is assessed a license fee of six dollars and fifty cents (\$6.50).

D. Upon each trailer or semi-trailer having a registered gross weight over one thousand five hundred (1,500) pounds there is assessed a license fee of fifteen dollars (\$15.00).

[Originally Adopted & Enacted October 14, 2010]

§4-6.3 Exemptions.

The license fees assessed by this Article shall not apply when:

A. A similar tax or fee is imposed by the county, city or town wherein the vehicle is normally garaged, stored or parked;

B. The vehicle is owned by a nonresident of the Town of Timberville and is used exclusively for pleasure or personal transportation and not for hire or for the conduct of any business or occupation other than that set forth in subparagraph (C) of this section;

C. The vehicle is (i) owned by a nonresident and (ii) used for transporting into and within the locality, for sale in person or by his employees, wood, meats, poultry, fruits, flowers, vegetables, milk, butter, cream, or eggs produced or grown by him, and not purchased by him for sale;

D. The motor vehicle, trailer, or semi-trailer is owned by an officer or employee of the commonwealth who is a nonresident of the Town of Timberville and who uses the vehicle in the performance of his duties for the Commonwealth under an agreement for such use;

E. The motor vehicle, trailer, or semi-trailer is kept by a dealer or manufacturer for sale or for sales demonstration;

F. The motor vehicle, trailer, or semi-trailer is operated by a common carrier of persons or property operating between cities and towns in the Commonwealth and not in intra-city

transportation or between cities and towns on the one hand and points and places outside cities and towns on the other and not in intra-city transportation; or

G. The motor vehicle, trailer, or semi-trailer is inoperable and unlicensed pursuant to Section 46.2-734 of the Code of Virginia.

H. Applicable to only one motor vehicle per veteran, when the motor vehicle is owned and used personally by any veteran who holds a current state motor vehicle registration card establishing that he has received a disabled veteran's exemption from the Department of Motor Vehicles and has been issued a disabled veteran's motor vehicle plate as prescribed in Section 46.2-739 of the Code of Virginia.

I. The vehicle is a daily rental vehicle, as defined in Section 58.1-2401 of the Code of Virginia, the rental of which is subject to the tax imposed by 58.1-2402.A.2 of the Code of Virginia.

J. Applicable to only one motor vehicle per Timberville Volunteer Fire Department or Broadway Volunteer Rescue Squad member, when the motor vehicle is owned and used personally by an active Timberville Volunteer Fire Department member or an active Broadway Volunteer Rescue Squad member.

K. An exemption is mandated by Virginia State Code.

L. Vehicles powered by clean special fuels as defined in §46.2-749-3 including dual-fuel and bi-fuel vehicles.

§4-6.4 License Fee Year; Billing and Collection.

The license fee assessed by this Article is assessed for one year without apportionment. The license fee year shall be the calendar year. The license fee shall be paid no later than December

31st or the billing date established for any supplemental personal property tax assessment for personal property that is subject to this license fee. The license fees assessed by this Article shall be billed with the personal property taxes assessed on motor vehicles and shall be collected by the Treasurer.

[Originally Adopted & Enacted October 14, 2010]

§4-6.5 License Fee Year; Billing and Collection.

Owners or lessees of motor vehicles, trailers, and semi-trailers who have served outside of the United States in the armed services of the United States shall have a 90-day grace period, beginning on the date they are no longer serving outside the United States, in which to comply with the requirements of this Article. For purposes of this section, “the armed services of the United States” includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

[Originally Adopted & Enacted October 14, 2010]

ARTICLE VII. – MEALS

§4-7.1 Definitions.

The following words and phrases, when used in this article, shall have for the purpose of this article, the following meanings, except where the context clearly indicates a different meaning:

Cater. The furnishing of food, beverages, or both, on the premises of another, for compensation.

Food. All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or off, and without regard to the manner, time or place of service.

Food Establishment. Any place in or from which food or food products are prepared, packaged, sold, or distributed in the town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionary, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

Meal. Meal shall mean any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name,

and without regard to the manner, time or place of service.

Treasurer. The treasurer of the town, or his/her duly authorized assistants.

§4-7.2 Policy.

There is hereby imposed and levied on each person a tax at the rate of seven percent (7%) on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

[Adopted June 8, 2023; Effective July 1, 2023]

§4-7.3 Collection.

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the person on whom the same is levied or from the person paying for such food at the time payment is made, whether payment is made in cash, check, or credit by means of a credit card or otherwise. All tax collections shall be deemed to be held in trust for the town.

§4-7.4 Return.

(a) The treasurer shall prescribe a meals tax collection return form, which shall show the amount of charges collected for meals and the tax required to be collected. The form shall contain an appropriate signature block and shall call for such other information as the treasurer may require.

(b) Every person collecting the meals tax shall complete a meals tax collection return

and submit it and the remittance of the tax to the treasurer on or before the close of business on the twentieth day of each month. Each return shall cover the amount of tax due and collected during the preceding month.

(c) A penalty of ten percent (.10), or ten dollars, whichever is greater, provided that in no case shall the penalty exceed the amount of the tax, shall be added to the tax for a report filed after the twentieth day of the month and before thirty days has elapsed.

(d) Interest of one and twenty-five tenths percent (1.25) for each month or portion thereof shall be added to the tax for a return filed thirty days or more after the tax due date.

§4-7.5 Exemptions.

(a) The tax imposed under this article shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premise consumption.

(b) The tax imposed under this article shall not be levied on the following items when served exclusively for off-premise consumption:

- 1) Donuts, ice cream, crackers, nabs, chips, cookies and factory prepackaged items of essentially the same nature.
- 2) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premise consumption (e.g., a whole cake, a gallon of ice cream). A bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off premise consumption.
- 3) Alcoholic and non-alcoholic beverages sold in factory sealed containers.

- 4) Any food or food product purchased with food coupons issued by the United States Department of Agricultural under the Food Stamp Program or drafts issued through the Virginia Special Supplement Food Program for Women, Infants, and Children.
- 5) Any food or food product purchased for home consumption as defined in the Federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the Federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, pre-packaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (d)(3), (4) and (5) below.

(c) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designed for the sale of prepared food or beverages.

(d) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

- 1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
- 2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

- 3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, or any political subdivision of the Commonwealth or the United States.
 - 4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.
 - 5) Food and beverages furnished by a public or non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
 - 6) Food and beverages sold by a non-profit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.
- (e) No blind person operating a vending stand or other business enterprise under the jurisdiction of the department for the visually handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

§4-7.6 Gratuities.

Where a purchaser provides a gratuity for an employee of a seller, and the amount of the

gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

§4-7.7 Duties.

It shall be the duty of every person required by this article to pay to the town the taxes imposed by this article to make a report thereof setting forth such information as the treasurer may prescribe and require, including all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. Such records shall be kept and preserved for a period of five years. The treasurer or his or her duly authorized assistants shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any part thereof.

§4-7.8 Violations.

Any corporate or partnership officer, as defined by in Virginia Code § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax impose under this article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any penalties imposed by law, be guilty of a Class 1 misdemeanor.

ARTICLE VIII. – MOTELS

§4-8.1 Violations.

The following words and phrases, when used in this article, shall have for the purpose of this article, the following meanings, except where the context clearly indicates a different meaning:

Motel. Any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house or other lodging place within the town offering lodging for transients at any time, and the owner and operator thereof who, for compensation, furnishes lodging to any transients as hereafter defined.

Room rental. The total charge made by any such motel for lodging and/or space furnished any such transient. If the charge made by such includes any charge for services or accommodations in addition to that of lodging, and/or use of space, then such portion of the total charge as represents only room and/or space rental shall be distinctly set out and billed to such transient by such motel as a separate item.

Transient. Any person who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any motel as herein above defined, for which lodging or use of space, a charge is made.

Treasurer. The treasurer of the town, or his/her duly authorized assistants.

§4-8.2 Policy.

There is hereby imposed and levied on each transient a tax equivalent to four percent of the total amount paid for room rental by or for such transient to any motel.

§4-8.2 Collection.

Every person receiving any payment for room rental with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the transient on whom the same is levied or from the person paying for such room rental at the time payment is made, whether payment is made in cash, check, or credit by means of a credit card or otherwise. All tax collections shall be deemed to be held in trust for the town.

§4-8.4 Return.

(a) The treasurer shall prescribe a motel tax collection return form, which shall show the amount of charges collected for room rental and the tax required to be collected. The form shall contain an appropriate signature block and shall call for such other information as the treasurer may require.

(b) Every person collecting the motel tax shall complete a motel tax collection return and submit it and the remittance of the tax to the treasurer on or before the close of business on the twentieth day of each month. Each return shall cover the amount of tax due and collected during the preceding month.

(c) A penalty of ten percent (.10), or ten dollars, whichever is greater, provided that in no case shall the penalty exceed the amount of the tax, shall be added to the tax for a return filed after the twentieth day of the month and before thirty days has elapsed.

(d) Interest of one and twenty-five tenths percent (1.25) for each month or portion thereof shall be added to the tax for a return filed thirty days or more after the tax due date.

§4-8.5 Exemptions.

No tax shall be payable hereunder on room rental paid to any hospital, medical clinic, convalescent home, or home for the aged.

§4-8.6 Duties.

It shall be the duty of every person required by this article to pay to the town the taxes imposed by this article to make a report thereof setting forth such information as the treasurer may prescribe and require, including all room rental charges taxable under this article, the amount charged the transient, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. Such records shall be kept and preserved for a period of five years. The treasurer or his or her duly authorized assistants shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any part thereof.

§4-8.7 Violations.

Any corporate or partnership officer, as defined by in Virginia Code § 58.1-3906, or any other person required to collect, account for, or pay over the motel tax impose under this article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any penalties imposed by law, be guilty of a Class 1 misdemeanor.

ARTICLE IX – TAXES

§4-9.1 Assessment of taxable property.

All taxable real estate, all taxable coal and other mineral lands, and all taxable tangible personal property and the tangible personal property of public service corporations, except rolling stock of corporations operating railroads, and also machinery and tools and the capital of merchants shall be assessed as of January 1 of each year.

§4-9.2 Payment of taxes on real estate.

The payment of taxes on real estate shall be December 31.

§4-9.3 Payment of taxes on personal property, etc.

The payment of taxes on tangible personal property, the capital of merchants, and machinery and tools shall be on December 31.

§4-9.4 Penalty for failure to pay taxes by December 31.

Any person failing to pay the town levies on or before December 31, as required, shall incur a penalty thereon of ten (10) percent, which shall be added to the amount of taxes or levies due from such taxpayer. The penalty shall in no case exceed the amount of the tax due. Interest shall commence on the first day following the day such taxes are due at the rate of ten (10) percent per year, and for the second and subsequent years of delinquency.

Penalty and interest for failure to pay a tax shall not be imposed if such failure was not the fault of the taxpayer. The failure to pay a tax due to the death of the taxpayer or a medically determinable physical or mental impairment on the date the tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the taxes are paid within thirty (30) days of the

due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the individual's affairs, such taxes paid within one hundred twenty (120) days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, pay any taxes that come due after the one hundred twenty-day period. The treasurer shall make determinations of fault relating exclusively to failure to pay a tax.

§4-9.5 Payment of administrative costs, etc.

There is hereby imposed upon each person chargeable with delinquent taxes or other delinquent charges owed to the town, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed twenty (20) percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed thirty dollars (\$30.00) for taxes or other charges collected subsequent to thirty (30) or more days after notice of delinquent taxes or charges pursuant to Virginia Code §58.1-3919 or its successor statute but prior to the taking of any judgement with respect to such delinquent taxes or charges, and thirty-five dollars (\$35.00) for taxes or other charges collected subsequent to judgement. If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be one hundred fifty dollars (\$150.00) or twenty-five (25) percent of the cost, whichever is less; however, in no event shall the fee be less than twenty-five dollars (\$25.00).

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under Virginia Code §58.1-3980 or its successor statute, so long as the appeal is filed within 90 days of the date of assessment, and for thirty (30) days after the date of the final determination of the appeal,

provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

ARTICLE X – SHORT-TERM RENTALS

§4-10.1 Definitions

The following words and phrases, when used in this article, shall have for the purpose of this article, the following meanings, except where the context clearly indicates a different meaning:

“*Lodging*” means any room or rooms, or space furnished to any transient.

“*Lodging Place*” means any public or private hotel, inn, hostelry, tourist home or house, bed-and-breakfast facility, tourist cabin, camping grounds, motel, rooming house or Short-Term Rental (as defined herein) within the Town offering lodging, for compensation, to any transient.

“*Proprietor*” means the owner(s) of a Short-Term Rental.

“*STR Operator*” means the Proprietor of any dwelling, lodging, or sleeping accommodations offered as a Short-Term Rental, except the term does not apply to those exempted by paragraph (b) below.

“*Short-Term Rental*” or “*STR*” means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.

“*Transient*” means any person who, for any period of not more than 30 consecutive days, either at his own expense or at the expense of another, obtains Lodging in any Lodging Place.

§4-10.2 Occupancy and Parking Restrictions

- A. Occupancy. Occupancy of a STR may not exceed two adult Transients per bedroom.
- B. Parking. The registration form shall contain a diagram for parking to be approved by the Town Planning Commission. All parking shall conform with the requirements of the Land Development Regulations of the Town.

§4-10.3 Annual Fee

- A. Registration. Every STR Operator shall register his STR's with the Town. All STR's shall have separate registrations. The registration shall be on a form approved by the Treasurer, and shall provide the complete name, telephone number, address, and email address of the STR Operator, along with the address of each STR operated within the Town. Registrations require a fee of \$50.00 and shall expire on February 28 of each year.
- B. Exemptions from Registration. This section does not require a person to register if such person is (i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§55-360 *et seq.*); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the Town, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.
- C. Failure to Register. Any STR Operator who fails to register as required by paragraph A of this section, shall pay a penalty of \$100.00 for each Lodging Place each day until registered. Further, until such STR Operator pays the penalty and registers such property, he may not continue to offer such property for short-term rental. Upon repeated violations of paragraph A of this section, as it relates to a specific property, an STR Operator may be prohibited from registering and offering that property for short-term rental in the sole discretion of the Town Manager or Town Zoning Administrator. Without limiting the foregoing, no STR shall be operated or advertised unless there be a valid registration on file for it.
- D. Compliance. The Town Manager, after consulting with the Planning Commission, shall prohibit an STR Operator from offering a specific property for short-term rental upon a finding of at least 4 violations of state and local law or regulations, within a 6 month period, as they relate to the specific property. An STR Operator prohibited from offering an STR under this paragraph may apply for reinstatement 18 months after the issuance of the prohibition order. The Town Planning Commission shall consider such application and shall grant it, if and only if, the Town Planning

Commission finds that changes have been made which will significantly reduce the likelihood of future violations. An STR Operator, aggrieved by a decision of the Town Planning Commission under this paragraph may make a written appeal to the Town Council within 10 days of receiving the Town Planning Commission's decision.

§4-10.4 Levy and Rate

There is hereby levied and imposed on each STR Operator a tax equivalent to 4.5% on the total amount paid for Lodging, by or for any such Transient, to any Lodging Place.

§4-10.5 Exemptions from Tax

No tax shall be payable under this chapter for charges for Lodging paid to (i) any hospital, medical clinic, convalescent home or home for aged people or (ii) to a college for Lodging for students or attendees of conferences at the college.

§4-10.6 Collection

- A. Every STR Operator receiving any payment for Lodging with respect to which a tax is levied under this chapter shall pay the amount of such tax so imposed to the Town as set forth in paragraph B of this section. The taxes required to be collected under this section shall be held in trust by the STR Operator required to collect such taxes, until remitted as required in this article.
- B. Whenever any STR Operator required to pay to the Town a tax under this article shall cease to operate or otherwise dispose of his STR, any tax payable under this chapter to the Town shall become immediately due and payable and such STR Operator shall immediately make a report and pay the tax due.

§4-10.7 Report

- A. It shall be the duty of every STR Operator required by this chapter to pay to the Town the taxes imposed by this chapter to make a report thereof setting forth such information as the Treasurer may prescribe and require, including all transactions taxable under this chapter, the amount charged for each such transaction, the date

- thereof, the taxes collected thereon and the amount of tax required to be collected by this chapter. For corporations, limited liability companies, and partnerships, every such report shall identify the person or persons whose responsibility it is to account for and pay over the taxes imposed by this chapter. Should such responsibility change before the next report is filed, the corporation, limited liability company, or partnership shall file an interim report designating the new responsible person.
- B. Reports and tax statements for the months of January, February, and March shall be made on or before the following April 20th. Reports and payments for the months of April, May, and June shall be made on or before the following July 20th. Reports and tax payments for the months of July, August, and September shall be made on or before the following October 20th. Reports and tax payments for the months of October, November, and December shall be made on or before the following January 20th.
- C. Further, every such STR Operator shall maintain records supporting the reports required by paragraph A of this section. Such records shall be kept and preserved for a period of 5 years. The Treasurer shall have the power to examine and copy such records at reasonable times and without reasonable interference with the operations of such STR Operator, for the purpose of administering and enforcing the provisions of this chapter.
- D. The Treasurer may enter into agreements with reservation services or other third parties or deviate from the procedures specified in this section in order to facilitate the collection of the tax imposed by this chapter. This paragraph does not authorize the Treasurer to alter the amount of tax owed by the STR Operator.

§4-10.8 **Penalty**

- A. Late Payment; Interest. If any STR Operator, whose duty it is so to do, shall fail to remit to the Treasurer the tax required to be collected and paid under this chapter, within specified time, interest and penalties shall be added to the tax as provided in this paragraph.
- B. Interest. Interest shall begin to accrue on the day following the due date at the annual rate of 10 percent.

- C. Failure to File Return. If any STR Operator, whose duty it is so to do, shall fail to make, within the time provided in this chapter, any report required by this section, the Treasurer shall estimate the tax due using such information as is available. Within 30 days from the date the tax was due, the Treasurer shall assess the estimated tax due, with penalties as provided in this section. The total amount thereof shall be payable immediately, and the Treasurer shall proceed to collect same as authorized by law.
- D. Penalties. The penalty for delinquent tax payments is the greater of (i) \$10.00 or (ii) 10% of the tax due for the first month payment is past due, plus an additional 5% of the tax due for each month thereafter, up to a maximum of 25% of the tax due. In no event, however, shall the penalty exceed the amount of the tax.

§4-10.9 Violation

Any STR Operator violating or failing to comply with any provisions of this chapter shall be guilty of a Class 1 misdemeanor. Conviction of such violation shall not relieve and STR Operator from the payment, collection or remittance of the taxes provided for in this article. Any tax not paid shall become a lien in that amount against the Lodging Place as a real estate tax.