

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

Be it ordained by the Council of the Town of Lumberport:

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

Section 1. Definitions.

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

- (a) "Person" includes individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character;
- (b) "Public utility service" means all services and tangible personal property purchased within the Town of Lumberport from a seller, as hereinafter in this section defined, namely, telephone service; electric service, gas service, including bottled or liquid gas, if the seller thereof

is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia; water service and sanitary sewer service; if purchased, used or consumed within the corporate limits of the Town of Lumberport;

- (c) "Purchaser" includes every person who purchases, uses or consumes a public utility service;
- (d) "Seller" includes every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies a public utility service; and
- (e) "User" means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.

Section 2. Imposition and levying of tax; amount of tax.

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of the Town of Lumberport, such public utility service. Such tax shall be in the amount of two percent of the charge (exclusive of any federal or state tax thereon imposed upon the purchaser) made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller,

and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this ordinance is in addition to all other taxes imposed and levied by the Town of Lumberport. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars in any given calendar month, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of said amount of twenty thousand dollars. In the event more than one public utility shall furnish the identical public utility service to the same purchaser, said purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service.

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

It shall be the duty of every seller in acting as the tax collecting medium or agency for the Town of Lumberport to collect from each purchaser for the use of the Town of Lumberport the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to the Town of Lumberport and each seller shall remit the amount of tax shown by said report to have been collected to the Town of Lumberport on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The tax imposed and levied by this ordinance

shall apply to periodic statements rendered after April five, one thousand nine hundred eighty for public utility service rendered subsequent to April five, one thousand nine hundred eighty, and when any such periodic statement covers public utility service rendered both before and after said date, only that portion of the charge for public utility service rendered after said date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after April four, one thousand nine hundred eighty, within the period covered by such periodic statement, bear to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the official of the Town of Lumberport charged with the responsibility of collecting taxes due the Town of Lumberport.

Section 4. Records; inspection thereof.

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

Section 5. Exemptions.

The tax hereby imposed and levied shall not apply to the

following transactions, which transactions are hereby exempted from such tax:

(a) Purchase of public utility service for resale;

(b) Purchases of public utility service by the United States of America, the State of West Virginia, and the political subdivisions thereof;

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

(d) Charges for telephone services which are paid by the insertion of coins into coin operated telephones, and specific charges or tolls for telephone calls to points outside the corporate limits of the Town of Lumberport; and

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

Section 6. Nonliability of utility; duty of the Town of Lumberport; refunds; rules and regulations.

There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of the Town of Lumberport, the seller shall refer the question to the official of the Town of Lumberport charged with the responsibility of collecting taxes due to the Town of Lumberport, and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by such

officials of the Town of Lumberport. Any and all claims for refunds of any such tax shall be presented to the Town of Lumberport and not to the seller.

The official of the Town of Lumberport charged with the responsibility of collecting taxes due the Town of Lumberport shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this ordinance.

Section 7. Enforcement provisions; penalties.

Any amount of tax due and unpaid under this ordinance shall be a debt due the Town of Lumberport. It shall be a personal obligation of the purchaser which shall be enforceable as provided in section fifteen, article thirteen, chapter eight of the Code of West Virginia, one thousand nine hundred thirty one, as amended, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

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

Section 8. Notice to utilities.

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

the tax imposed and levied hereby.

Section 9. Severability.

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

PASSED by the Council of the Town of Lumberport, West Virginia, on FIRST READING this 7th day of JANUARY, 1980.

PASSED by the Council of the Town of Lumberport, West Virginia, on SECOND and FINAL READING this 4th day of February, 1980.

R. S. Wright
Mayor

ATTEST:

Mudge L. Kellum
Town Recorder