# WEST VIRGINIA CODE CHAPTER 7 ARTICLE 18

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## §7-18-1. Hotel occupancy tax.

(a) Authority to impose. -- On and after July 1, 1985, any county or municipality may impose and collect a privilege tax upon the occupancy of hotel rooms located within its taxing jurisdiction. The tax shall be imposed and collected as provided in this article.

(b) Municipal tax. -- A municipal hotel tax shall be imposed by ordinance enacted by the governing body of the municipality, in accordance with the provisions of article eleven, chapter eight of this code. The tax shall be imposed uniformly throughout the municipality; and the tax shall apply to all hotels located within the corporate limits of the municipality, including hotels owned by the state or by any political subdivision of this state.

(c) County tax. -- A county hotel tax shall be imposed by order of the county commission duly entered of record. The tax shall be imposed uniformly throughout the county: Provided, That no county commission may impose its tax on hotels located within the corporate limits of any municipality situated, in whole or in part, within the county: Provided, however, That the tax collected by a hotel owned by a municipality but located outside the corporate limits of the municipality pursuant to this article shall be remitted to the municipality owning the hotel for expenditure pursuant to the provisions of section fourteen of this article. The tax shall apply to all hotels located outside the corporate limits of a municipality, including hotels owned by the state or any political subdivision of this state.

(d) The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room.

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**§7-18-2. Rate of tax.**

(a) The rate of tax imposed shall be three percent of the consideration paid for the use or occupancy of a hotel room.

(b) On and after July 1, 2005, a municipality may by ordinance increase the rate of tax imposed in this section to not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided, That notwithstanding any other provision of this article to the contrary, a municipality may not impose any tax authorized by this article on a hotel located within its corporate limits upon which a county was imposing a tax authorized by this article on or after January 1, 2005, and continuously thereafter to and including the effective date of annexation of the territory in which the hotel is located pursuant to article six, chapter eight of this code and, as to that hotel, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of three percent of the consideration paid for the use or occupancy of a hotel room: Provided, however, That after June 30, 2007, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided further, That prior to any increase in the rate of tax, the county shall comply with the requirements of subsection (c) of this section: And provided further, That in the event the county commission duly enters an order of record that ceases to impose the tax authorized by this article on that hotel, then, as to that hotel, the municipality in which the hotel is located by reason of the annexation may impose the tax authorized by this article. Prior to the second reading of an ordinance proposed by a municipality to increase the rate of tax, the municipality shall conduct a properly noticed public hearing on the issue.

(c) On and after July 1, 2007, a county may by ordinance increase the rate of tax imposed in this section to not more than six percent of the consideration paid for the use or occupancy of a hotel room. At least 10 days prior to the final vote of a county commission on an ordinance proposed by a county commission to increase the rate of tax, the county commission shall conduct a properly noticed public hearing on the issue.

(d) The consideration paid for the use or occupancy of a hotel room may not include the amount of tax imposed on the transaction under §11-15-1 et seq. of this code or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.

(e) The tax may not be imposed on complimentary hotel rooms provided without charge by a hotel operator to guests.

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**§7-18-3. Definitions.**

For the purposes of this article:

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

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

(c) "Hotel" means any facility, building, or buildings, publicly or privately owned (including a facility located in a state, county, or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term includes, but is not limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins, and tourist homes. The term "hotel" includes state, county, and city parks offering accommodations as herein set forth. The term "hotel" does not mean a hospital, sanitarium, extended care facility, nursing home, or university or college housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a total of 10 days in a calendar year, nor any tent, trailer, or camper campsites: *Provided*, That where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" does, if otherwise applicable, apply to those accommodations for the purposes of this tax.

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

(e) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" does not include:

(1) A banquet room, meeting room, or any other room not primarily used for, or in conjunction with, sleeping accommodations;

(2) Sleeping accommodations rented on a month-to-month basis or other rental arrangement for 30 days or longer at the inception at a boarding house, condominium, cabin, tourist home, apartment, or home; or

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(3) Sleeping accommodations rented by a hotel operator to those persons directly employed by the hotel operator for the purposes of performing duties in support of the operation of the hotel or related operations.

(f) "Marketplace facilitator" shall have the same meaning as stated in §11-15A-1(b)(8) of this code.

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

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

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

(j) "Taxing authority" means a municipality or county levying or imposing the tax authorized by this article.

(k) "Taxpayer" means any person liable for the tax authorized by this article.

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**§7-18-4. Consumer to pay tax; collection of tax by marketplace facilitators; hotel, hotel operator, or marketplace facilitator not to represent that it will absorb tax; accounting by hotel and marketplace facilitators.**

(a) The consumer shall pay to the hotel operator the amount of tax imposed by any municipality or county hereunder, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account, and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations unless the taxing authority, by ordinance, order, regulation, or otherwise, requires in writing that the hotel operator segregate such taxes collected from such proceeds. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the state for moneys held by the hotel pursuant to the provisions of §11-15-1 *et seq*. of this code. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until those taxes have been remitted to the taxing authority as hereinafter provided.

(b) Economic nexus and duty of certain marketplace facilitators to collect tax. — Where a hotel or hotel operator contracts with a marketplace facilitator to offer the use or occupancy of a hotel room, such marketplace facilitator shall be responsible, on behalf of the hotel or hotel operator, for the collection and remittance of the tax imposed by any municipality or county pursuant to this article when:

(1) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel or hotel operators equal to or exceeding $100,000 in gross revenue for an immediately preceding calendar year, or a current calendar year; or

(2) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel or hotel operators in 200 or more separate transactions for an immediately preceding calendar year or a current calendar year.

For purposes of this section, a marketplace facilitator meeting the requirements of this subsection is deemed to be an agent of any hotel or hotel operator making retail sales through the marketplace facilitator's physical or electronic marketplace.

(c) Collection and remittance of tax by marketplace facilitators. —

(1) Where a marketplace facilitator is responsible for the collection and remittance of the tax imposed pursuant to subsection (b) of this section, the marketplace facilitator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account, and records relating to consideration paid for the occupancy or use of a hotel room.

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(2) Where a hotel or hotel operator contracts with a marketplace facilitator to offer the use or occupancy of a hotel room, the marketplace facilitator shall maintain records of every hotel or hotel operator and such records shall include:

(A) The name of the hotel, motel, short-term rental, or vacation rental where the lodging occurred;

(B) The name of the hotel, motel, short-term rental, or vacation rental owner;

(C) The address where the lodging occurred;

(D) The dates when the lodging occurred;

(E) The amount of tax received as required under this article;

(F) The date the amount of tax was received; and

(G) Whether the tax received was a municipal or county tax.

(3) A marketplace facilitator shall use geofencing or a similar mechanism to provide an accurate basis for occupancy tax collection.

(4) A marketplace facilitator shall use a nine-digit postal code when necessary in order to guarantee the collected tax is being remitted to the proper political subdivision.

(5) All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the marketplace facilitator, on behalf of the hotel or hotel operator, until those taxes have been remitted by the marketplace facilitator to the taxing authority in accordance with §7-18-10 of this code. The marketplace facilitator shall remit the tax to:

(A) The county treasurer for lodging taxes for county convention and visitors bureaus; and

(B) The municipal treasurer, clerk, or recorder as dictated by the municipal charter for lodging taxes for a municipal convention and visitors bureau.

(6) This section does not interfere with the ability of a marketplace facilitator and a hotel or hotel operator to enter into an agreement regarding fulfillment of the requirements of §7-18-1 *et seq*. of this code.

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

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## §7-18-5. Occupancy billed to government agencies or employees.

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

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

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## §7-18-6. Collection of tax when sale on credit.

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

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## §7-18-7. Receivership bankruptcy; priority of tax.

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

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## §7-18-8. Failure to collect or remit tax; liability of hotel operator.

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

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## §7-18-9. Total amount collected to be remitted.

A profit may not accrue to any person as a result of the collection of the tax authorized under this article. Notwithstanding that the total amount of taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy imposed under this article for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

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## §7-18-10. Tax return and payment.

Unless otherwise provided by ordinance, order, rule or regulation of the taxing authority, the tax authorized by this article, if imposed or levied by any municipality or county, shall be due and payable in monthly installments on or before the fifteenth day of the calendar month next succeeding the month in which the tax accrued: Provided, That for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the thirty day payment period set forth in section six of this article, whichever shall first occur. The hotel operator shall, on or before the fifteenth day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the taxing authority. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the taxing authority may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.

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## §7-18-11. Keeping and preserving of records.

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years, unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

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## §7-18-12. Liability of officers.

If the taxpayer is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by state law, municipal ordinance, order of the county commission or other authority may be enforced against such officers as against the association or corporation which they represent.

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## §7-18-13. General procedure and administration.

(a) The taxing authority shall promulgate, by ordinance, order, rule or regulation, administrative procedures for the assessment, collection and refund of the tax authorized by this article. In the case of a county, the sheriff of that county shall be the county's agent for administration and collection of the tax and shall have the power to distrain property and to initiate civil suits for collection of this tax. The county commission may promulgate such regulations and return forms as may be necessary or desirable for the administration and collection of the tax.

(b) The county assessor shall have the power and the duty to issue tax returns and to receive tax returns for this tax.

(c) In any dispute arising among or between cities or counties or cites and counties as to jurisdiction to tax or apportionment of taxes collected, the Tax Commissioner may by ruling or regulation decide such disputes.

(d) Notwithstanding any other provisions of this section, taxing authorities may, in accordance with the provisions of article twenty-three, chapter eight of this code, enter into agreements among and between such taxing authorities for the collection or administration of this tax.

(e) Notwithstanding any other provisions of this section, taxing authorities may in accordance with the provisions of article twenty-three, chapter eight of this code, enter into agreements with the Tax Commissioner for auditing services: Provided, That the taxing authorities shall pay to the Tax Commissioner the reasonable cost of such audits.

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## §7-18-13a. Annual reports by convention and visitor's bureaus; eligibility for hotel occupancy tax proceeds.

(a) On or before 90 days after the end of its fiscal year, every convention and visitor's bureau which receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall file with each such county or municipality, the State Auditor, the Joint Committee on Government and Finance, and the West Virginia Association of Convention and Visitors Bureaus a report, including an income statement and balance sheet, showing all amounts of hotel occupancy tax appropriated to the convention and visitor's bureau and all expenditures of hotel occupancy tax made by the convention and visitor's bureau for the prior fiscal year, as well as any such information required by subsection (b) of this section. A convention and visitor's bureau that has not filed a report in accordance with the provisions of this section shall be ineligible to receive additional appropriations of hotel occupancy tax proceeds until such report has been filed.

(b) In order to qualify for a distribution of net proceeds pursuant to §7-18-14 of this code, a convention and visitor's bureau shall satisfy the following requirements:

(1) The convention and visitor's bureau shall have a minimum annual budget;

(2) The convention and visitor's bureau shall establish a marketing plan targeting markets outside of a 50-mile radius of the bureau's municipality or county of operation;

(3) The annual operating budget for the convention and visitor's bureau allocates approximately 40 percent of annual revenues to advertising and marketing, approximately 40 percent to salaries and personnel, and approximately 20 percent to other operating expenses: *Provided*, That a convention and visitor's bureau that allocates less than 40 percent of annual revenues to salaries and personnel shall be considered to have satisfied the budget allocation requirement;

(4) The convention and visitor's bureau has a full-time executive director that maintains the minimum number of continuing education hours recommended annually by industry standards;

(5) The convention and visitor's bureau has a physical office and/or visitor center that is accessible at least 40 hours per week and has a dedicated phone line;

(6) The convention and visitor's bureau maintains a website and appropriate marketing materials;

(7) The convention and visitor's bureau has received accreditation from an accrediting body; and

(8) The convention and visitor's bureau submits an annual report to all of its funding entities, which shall include, but not be limited to, the information provided for in this subsection; and .

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Nothing in this section may be construed as to interfere with the ability of a county or municipality to enter into any agreements or partnerships with convention and visitor's bureaus in neighboring counties or municipalities for the purposes of distributing net tax proceeds pursuant to §7-18-14 of this code, so long as all other requirements of this section are met.

(c) At least once every three years, any bureau that receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall cause an audit or financial review, in a form as is appropriate to the particular bureau, to be made by an independent certified public accountant of all its books, accounts, and records relating to all receipts and expenditures of any hotel occupancy tax appropriations for the three prior fiscal years of the bureau. A copy of the audit or financial review shall be filed with each county or municipality from which the bureau received an appropriation of hotel occupancy tax, the State Auditor, the Joint Committee on Government and Finance, and the West Virginia Association of Convention and Visitors Bureaus. After July 1, 2024, a bureau that has not caused such an audit or financial review to be made is ineligible to receive an appropriation of hotel occupancy tax proceeds pursuant to §7-18-14 of this code.

(d) In order to encourage counties and municipalities to work within the existing framework of convention and visitor's bureaus, there shall be a moratorium on the authorization of new convention and visitor's bureaus until June 30, 2026. A county or municipality may not appropriate any net proceeds of hotel occupancy taxes, pursuant to §7-18-14 of this code, to any convention or visitor's bureau created on or after the amendments to this section enacted during the regular session of the Legislature, 2021, and prior to the end of the moratorium imposed by this subsection. On or after June 30, 2026, any new convention and visitor's bureau which meets all of the requirements of subsection (b) of this section shall qualify for a distribution of net proceeds pursuant to §7-18-14 of this code.

(e) No county commission of a county in which a convention and visitor's bureau is located shall be prohibited from appointing one county commissioner as a voting member of the county convention and visitor's bureau. If there is a multi-county convention and visitor's bureau, each county commission associated with that facility shall be allowed, in its discretion, to have a voting-member seat on the multi-county convention and visitor's bureau board: *Provided*, That the absence of any county commissioner member from any timely noticed and scheduled business meeting of the county convention and visitor's bureau shall not be considered for suggesting the absence of a quorum for the conducting of the business to be considered on the county convention and visitor's bureau's meeting agenda.

(f) Nothing in this section may prohibit either the State Auditor or the Legislative Auditor from conducting regular reviews or audits of the operations or finances of a convention and visitor's bureau to ensure compliance with this code.

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## §7-18-14. Proceeds of tax; application of proceeds.

(a) Application of proceeds. — The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of such municipality or county commission and, after appropriation thereof, shall be expended only as provided in this section.

(b) Required expenditures. — At least 50 percent of the net revenue receivable during the fiscal year by a county or a municipality pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

(1) Municipalities. — If a convention and visitor's bureau is located within the municipality, county, or region, and has complied with the requirements of §7-18-13a of this code, the governing body of such municipality shall appropriate the percentage required by this subsection to that bureau. If a convention and visitor's bureau is not located within such municipality, county or region, or a bureau located within such municipality has not complied with the requirements of §7-18-13a of this code, then the percentage appropriation required by this subsection shall be appropriated as follows:

(A) Any hotel located within such municipality may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications, and similar expenses. The portion of such tax allocable to such hotel shall not exceed 75 percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: *Provided*, That prior to appropriating any moneys to such hotel, such municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(B) If there is more than one convention and visitor's bureau that is in compliance with the requirements of §7-18-13a of this code located within a municipality, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.

(2) Counties. — If a convention and visitor's bureau is located within a county or region and has complied with the requirements of §7-18-13a of this code, the county commission shall appropriate the percentage required by this subsection to that convention and visitor's bureau. If a convention and visitor's bureau is not located within such county or region, or a bureau located within the county or region has not complied with the requirements of §7-18-13a of this code, then the percentage appropriation required by this subsection shall be appropriated as follows:

(A) Any hotel located within the county or region may apply to the county for an appropriation to the hotel of a portion of the tax authorized by this article and collected by the hotel and remitted to the county for uses directly related to the promotion of tourism and

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travel, including advertising, salaries, travel, office expenses, publications, and similar expenses. The portion of the tax allocable to the hotel may not exceed 75 percent of that portion of the tax collected and remitted by the hotel which is required to be expended pursuant to this subsection: *Provided*, That prior to appropriating any moneys to the hotel, the county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(B) If there is more than one convention and visitor's bureau that is in compliance with the requirements of §7-18-13a of this code located within a county or region, the county commission may allocate the tax authorized by this article to one or more of the bureaus in such portion as the county commission in its sole discretion determines.

(3) Legislative finding. — The Legislature hereby finds and declares that in order to attract new business and industry to this state and to retain existing business and industry all to provide the citizens of the state with economic security and to advance the business prosperity and economic welfare of this state, it is necessary to enhance recreational and tourism opportunities. Therefore, in order to promote recreation and tourism, the Legislature finds that public financial support should be provided for constructing, equipping, improving, and maintaining projects, agencies, and facilities which promote recreation and tourism. The Legislature also finds that the support of convention and visitor's bureaus and hotels is a public purpose for which funds may be expended. Local convention and visitor's bureaus and hotels receiving funds under this subsection may expend the funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by this subsection.

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

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

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

(3) The promotion of conventions;

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

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(5) The promotion of the arts;

(6) Historic sites;

(7) Beautification projects;

(8) Demolition of unsafe and unsanitary structures pursuant to §8-12-16 and §7-1-3ff of this code;

(9) Planning for reuse or improvement of property owned by municipalities and county commissions;

(10) Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations in this state;

(11) Medical care and emergency services in any county where:

(A) There is an urgent necessity to preserve the delivery of acute medical care and emergency services;

(B) There is an increase in need for acute medical care and emergency services directly related to tourism;

(C) Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care and emergency services;

(D) There is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care and emergency services;

(E) There is an inadequate economic base directly related to low population in the county, specifically, a population of less than 10,000 persons according to the most recent decennial census taken under the authority of the United States;

(F) There is no more than one hospital within the county; and

(G) The county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist;

(12) Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the Hatfield-McCoy Regional Recreational Authority; or

(13) Support and operation of economic development activities, including site development, facilities, and infrastructure in an amount not to exceed $200,000.

(d) Definitions. — For purposes of this section, the following terms are defined:

(1) Convention and visitor’s bureau and visitor’s and convention bureau. — "Convention and

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visitor’s bureau" and "visitor’s and convention bureau" are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences, and visitors to the municipality, county, or region in which the convention and visitor’s bureau or visitor’s and convention bureau is located or engaged in business within.

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

(3) Fiscal year. — "Fiscal year" means the year beginning July 1 and ending June 30 of the next calendar year.

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

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

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

(7) Region. — "Region" means an area consisting of one or more counties or municipalities that have agreed by contract to fund a convention and visitor’s bureau to promote those counties or municipalities.

(8) Historic site. — "Historic site" means any site listed on the United States National Register of Historic Places, or listed by a local historical landmarks commission, established under state law, when the sites are owned by a city, a county, or a nonprofit historical association and are open, from time to time, to accommodate visitors.

(e) Any member of a governing body who willingly and knowingly votes to or causes to be expended moneys generated by the provisions of this section for purposes other than specifically set forth in this section, or who approves of or otherwise facilitates the distribution of net proceeds to a convention and visitor’s bureau failing to meet the requirements of §7-18-13a(b) of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

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**§7-18-15. Criminal penalties.**

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

(b) Any person willfully violating any of the provisions of this article shall for the first offense be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500 or imprisoned for a period of not more than thirty days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000, or imprisoned in the penitentiary not less than one nor more than three years, or in the discretion of the court be confined in the county jail not more than one year, or both fined and imprisoned.

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

(d) Proceedings against any person under this section shall be initiated in the county of this state wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence, then in the county where the offense was committed.

(e) For purposes of this section, the term:

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

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

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

WV Legislature