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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



ENROLLED

HOUSE BILL No. 2090

(By ~~Mr.~~ Del. Davis + Del. Kells)



Passed April 13, 1985

In Effect July 1, 1985 ~~Passage~~



ENROLLED
H. B. 2090

(By DELEGATE DAVIS and DELEGATE WELLS)

[Passed April 13, 1985; in effect July 1, 1985.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to authorizing county commissions and municipalities to impose a local hotel tax in conformity with state law, and as to such, providing for three percent rate of tax; definitions of terms; liability of the consumer for payment of the tax; collection of the tax by the hotel operator as a part of the consideration paid for the use or occupancy of hotel room; commingling of tax with receipts by hotel operator unless otherwise required; taxing authority to have superior lien thereon; hotel not to represent that it will absorb all or any part of tax; occupancy billed to government agencies and employees; collection of tax on credit sales; priority of tax as subordinate in bankruptcy to claims of the United States and this state; personal liability of hotel operator for failure to collect or remit tax; remittance of tax by hotel to taxing authority; returns and payment of tax; record keeping; personal liability of officers; general administration; expenditure of tax receipts; and imposing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen, to read as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-1. Hotel occupancy tax.

1 (a) *Authority to impose.* — On and after the first day of
2 July, one thousand nine hundred eighty-five, any county or
3 municipality may impose and collect a privilege tax upon the
4 occupancy of hotel rooms located within its taxing jurisdiction.
5 Such tax shall be imposed and collected as provided in this
6 article.

7 (b) *Municipal tax.* — A municipal hotel tax shall be
8 imposed by ordinance enacted by the governing body of the
9 municipality, in accordance with the provisions of article
10 eleven, chapter eight of this code. Such tax shall be imposed
11 uniformly throughout the municipality; and the tax shall apply
12 to all hotels located within the corporate limits of the
13 municipality, including hotels owned by the state or by any
14 political subdivision of this state.

15 (c) *County tax.* — A county hotel tax shall be imposed by
16 order of the county commission duly entered of record. Such
17 tax shall be imposed uniformly throughout the county:
18 *Provided,* That no county commission may impose its tax on
19 hotels located within the corporate limits of any municipality
20 situated, in whole or in part, within the county: *Provided,*
21 *however,* That the tax collected by a hotel owned by a
22 municipality but located outside the corporate limits of such
23 municipality pursuant to this article shall be remitted to the
24 municipality owning such hotel for expenditure pursuant to
25 the provisions of section fourteen of this article. The tax shall
26 apply to all hotels located outside the corporate limits of a
27 municipality, including hotels owned by the state or any
28 political subdivision of this state.

29 (d) The tax shall be imposed on the consumer and shall be
30 collected by the hotel operator as part of the consideration
31 paid for the occupancy of a hotel room: *Provided,* That the
32 tax shall not be imposed on any consumer occupying a hotel
33 room for thirty or more consecutive days.

§7-18-2. Rate of tax.

1 The rate of tax imposed shall be three percent of the
2 consideration paid for the use or occupancy of a hotel room.
3 Such consideration shall not include the amount of tax
4 imposed on the transaction under article fifteen, chapter eleven

5 of this code, or charges for meals, valet service, room service,
6 telephone service or other charges or consideration not paid
7 for use or occupancy of a hotel room.

§7-18-3. Definitions.

1 For the purposes of this article:

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

6 (b) "Consumer" means a person who pays the consideration
7 for the use or occupancy of a hotel room. The term
8 "consumer" shall not be construed to mean the government
9 of the United States of America, its agencies or instrumental-
10 ities, or the government of the state of West Virginia or
11 political subdivisions thereof.

12 (c) "Hotel" means any facility, building or buildings,
13 publicly or privately owned (including a facility located in a
14 state, county or municipal park), in which the public may, for
15 a consideration, obtain sleeping accommodations. The term
16 shall include, but not be limited to, boarding houses, hotels,
17 motels, inns, courts, lodges, cabins and tourist homes. The
18 term "hotel" shall include state, county and city parks offering
19 accommodations as herein set forth. The term "hotel" shall not
20 be construed to mean any hospital, sanitarium, extended care
21 facility, nursing home or university or college housing unit or
22 any facility providing fewer than three hotel rooms, nor any
23 tent, trailer or camper campsites: *Provided*, That where a
24 university or college housing unit provides sleeping accommo-
25 dations for the general nonstudent public for a consideration,
26 the term "hotel" shall, if otherwise applicable, apply to such
27 accommodations for the purposes of this tax.

28 (d) "Hotel operator" means the person who is proprietor of
29 a hotel, whether in the capacity of owner, lessee, mortgagee
30 in possession, licensee, trustee in possession, trustee in
31 bankruptcy, receiver, executor or in any other capacity. Where
32 the hotel operator performs his functions through a managing
33 agent of any type or character other than an employee, the
34 managing agent shall also be deemed a hotel operator for the
35 purposes of this article and shall have the same duties and

36 liabilities as his principal. Compliance with the provisions of
37 this article by either the principal or the managing agent shall,
38 however, be considered to be compliance by both.

39 (e) "Hotel room" means any room or suite of rooms or
40 other facility affording sleeping accommodations to the general
41 public and situated within a hotel. The term "hotel room" shall
42 not be construed to mean a banquet room, meeting room or
43 any other room not primarily used for, or in conjunction with,
44 sleeping accommodations.

45 (f) "Person" means any individual, firm, partnership, joint
46 venture, association, syndicate, social club, fraternal organiza-
47 tion, joint stock company, receiver, corporation, guardian,
48 trust, business trust, trustee, committee, estate, executor,
49 administrator or any other group or combination acting as a
50 unit.

51 (g) "State park" means any state-owned facility which is
52 part of this state's park and recreation system established
53 pursuant to this code. For purposes of this article, any
54 recreational facility otherwise qualifying as a "hotel" and
55 situated within a state park shall be deemed to be solely within
56 the county in which the building or buildings comprising said
57 facility are physically situated, notwithstanding the fact that
58 the state park within which said facility is located may lie
59 within the jurisdiction of more than one county.

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

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

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

**§7-18-4. Consumer to pay tax; hotel or hotel operator not to
represent that it will absorb tax; accounting by hotel.**

1 (a) The consumer shall pay to the hotel operator the
2 amount of tax imposed by any municipality or county
3 hereunder, which tax shall be added to and shall constitute
4 a part of the consideration paid for the use and occupancy
5 of the hotel room, and which tax shall be collectible as such
6 by the hotel operator who shall account for, and remit to the

7 taxing authority, all taxes paid by consumers. The hotel
 8 operator shall separately state the tax authorized by this article
 9 on all bills, invoices, accounts, books of account and records
 10 relating to consideration paid for occupancy or use of a hotel
 11 room. The hotel operator may commingle taxes collected
 12 hereunder with the proceeds of the rental of hotel accommo-
 13 dations unless the taxing authority shall, by ordinance, order,
 14 regulation or otherwise require in writing the hotel operator
 15 to segregate such taxes collected from such proceeds. The
 16 taxing authority's claim shall be enforceable against, and shall
 17 be superior to, all other claims against the moneys so
 18 commingled excepting only claims of the state for moneys held
 19 by the hotel pursuant to the provisions of article fifteen,
 20 chapter eleven of this code. All taxes collected pursuant to the
 21 provisions of this article shall be deemed to be held in trust
 22 by the hotel until the same shall have been remitted to the
 23 taxing authority as hereinafter provided.

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

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

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

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

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

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

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

1 In the distribution, voluntary or compulsory, in receivership,
 2 bankruptcy or otherwise, of the property or estate of any

3 person, all taxes due and unpaid authorized under this article
4 shall be paid from the first money available for distribution
5 in priority to all claims and liens except taxes and debts due
6 to the United States which under federal law are given priority
7 over the debts and liens created by municipal ordinance or
8 order of the county commission for this tax and taxes and
9 debts due to the state of West Virginia. Any person charged
10 with the administration or distribution of any such property
11 or estate who shall violate the provisions of this section shall
12 be personally liable for any taxes accrued and unpaid which
13 are chargeable against the person whose property or estate is
14 in administration or distribution.

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

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

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

1 No profit shall accrue to any person as a result of the
2 collection of the tax authorized under this article. Notwith-
3 standing that the total amount of such taxes collected by a
4 hotel operator may be in excess of the amount for which a
5 consumer would be liable by the application of the levy of
6 three percent for the occupancy of a hotel room or rooms,
7 the total amount of all taxes collected by any hotel operator
8 shall be remitted to the taxing authority as hereinafter
9 provided.

§7-18-10. Tax return and payment.

1 Unless otherwise provided by ordinance, order, rule or
2 regulation of the taxing authority, the tax authorized by this
3 article, if imposed or levied by any municipality or county,
4 shall be due and payable in monthly installments on or before
5 the fifteenth day of the calendar month next succeeding the

6 month in which the tax accrued: *Provided*, That for credit
7 sales in which the tax authorized by this article is not collected
8 by the hotel operator at the time of such sales, such tax shall
9 not, for purposes of this article, be regarded as having accrued
10 until the date on which it is either received by the hotel
11 operator or upon the expiration of the thirty day payment
12 period set forth in section six of this article, whichever shall
13 first occur. The hotel operator shall, on or before the fifteenth
14 day of each month, prepare and deliver to the taxing authority
15 a return for the preceding month, in the form prescribed by
16 the taxing authority. Such form shall include all information
17 necessary for the computation, collection and subsequent
18 distribution of the tax as the taxing authority may require. A
19 remittance for the amount of the tax due shall accompany each
20 return. Each return shall be signed by the hotel operator or
21 his duly authorized agent.

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

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

§7-18-12. Liability of officers.

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

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

1 (a) The taxing authority shall promulgate, by ordinance,
2 order, rule or regulation, administrative procedures for the

3 assessment, collection and refund of the tax authorized by this
4 article. In the case of a county, the sheriff of that county shall
5 be the county's agent for administration and collection of the
6 tax and shall have the power to distrain property and to
7 initiate civil suits for collection of this tax. The county
8 commission may promulgate such regulations and return
9 forms as may be necessary or desirable for the administration
10 and collection of the tax.

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

13 (c) In any dispute arising among or between cities or
14 counties or cities and counties as to jurisdiction to tax or
15 apportionment of taxes collected, the tax commissioner may
16 by ruling or regulation decide such disputes.

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

22 (e) Notwithstanding any other provisions of this section,
23 taxing authorities may, in accordance with the provisions of
24 article twenty-three, chapter eight of this code, enter into
25 agreements with the tax commissioner for auditing services:
26 *Provided*, That the taxing authorities shall pay to the tax
27 commissioner the reasonable cost of such audits.

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

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

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

12 (1) *Municipalities.* — If a convention and visitor's bureau

13 is located within the municipality, the governing body of such
14 municipality shall appropriate the percentage required by this
15 subsection (b) to that bureau. If a convention and visitor's
16 bureau is not located within the municipality, but such a
17 bureau is located within the county in which the municipality
18 is located, then the percentage appropriation required by this
19 subsection (b) shall be appropriated to such convention and
20 visitor's bureau located within such county. If a convention
21 and visitor's bureau is not located within such county, then
22 the percentage appropriation required by this subsection (b)
23 shall be appropriated as follows:

24 (i) Any hotel located within such municipality may apply
25 to such municipality for an appropriation to such hotel of a
26 portion of the tax authorized by this article and collected by
27 such hotel and remitted to such municipality, for uses directly
28 related to the promotion of tourism and travel, including
29 advertising, salaries, travel, office expenses, publications and
30 similar expenses. The portion of such tax allocable to such
31 hotel shall not exceed seventy-five percent of that portion of
32 such tax collected and remitted by such hotel which is required
33 to be expended pursuant to subsection (b) of this section:
34 *Provided*, That prior to appropriating any moneys to such
35 hotel such municipality shall require the submission of, and
36 give approval to, a budget setting forth the proposed uses of
37 such moneys.

38 (ii) The balance of net revenue required to be expended by
39 subsection (b) of this section shall be appropriated to the
40 regional travel council serving the area in which the
41 municipality is located.

42 (2) *Counties*. — If a convention and visitor's bureau is
43 located within a county, the county commission shall
44 appropriate the percentage required by this subsection (b) to
45 that convention and visitor's bureau. If a convention and
46 visitor's bureau is not located within such county, then the
47 percentage appropriation required by this subsection (b) shall
48 be appropriated as follows:

49 (i) Any hotel located within such county may apply to such
50 county for an appropriation to such hotel of a portion of the
51 tax authorized by this article and collected by such hotel and
52 remitted to such county, for uses directly related to the

53 promotion of tourism and travel, including advertising,
54 salaries, travel, office expenses, publications and similar
55 expenses. The portion of such tax allocable to such hotel shall
56 not exceed seventy-five percent of that portion of such tax
57 collected and remitted by such hotel which is required to be
58 expended pursuant to subsection (b) of this section: *Provided*,
59 That prior to appropriating any moneys to such hotel such
60 county shall require the submission of, and give approval to,
61 a budget setting forth the proposed uses of such moneys.

62 (ii) The balance of net revenue required to be expended by
63 subsection (b) of this section shall be appropriated to the
64 regional travel council serving the area in which the county
65 is located.

66 (3) *Legislative finding.* — The Legislature hereby finds that
67 the support of convention and visitor's bureaus, hotels and
68 regional travel councils is a public purpose for which funds
69 may be expended. Local convention and visitor's bureaus,
70 hotels and regional travel councils receiving funds under this
71 subsection (b) may expend such funds for the payment of
72 administrative expenses, and for the direct or indirect
73 promotion of conventions and tourism, and for any other uses
74 and purposes authorized by subdivisions one and two of this
75 subsection (b).

76 (c) *Permissible expenditures.* — After making the appropri-
77 ation required by subsection (b) of this section, the remaining
78 portion of the net revenues receivable during the fiscal year
79 by such county or municipality, pursuant to this article, may
80 be expended for one or more of the purposes set forth in this
81 subsection, but for no other purpose. The purposes for which
82 expenditures may be made pursuant to this subsection are as
83 follows:

84 (1) The planning, construction, reconstruction, establish-
85 ment, acquisition, improvement, renovation, extension,
86 enlargement, equipment, maintenance, repair and operation of
87 publicly owned convention facilities including, but not limited
88 to, arenas, auditoriums, civic centers and convention centers;

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

91 (3) The promotion of conventions;

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

95 (5) The promotion of the arts.

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

98 (1) *Convention and visitor's bureau and visitor's and*
99 *convention bureau.* — “Convention and visitor's bureau” and
100 “visitor's and convention bureau” are interchangeable, and
101 either shall mean a nonstock, nonprofit corporation with a
102 full-time staff working exclusively to promote tourism and to
103 attract conventions, conferences and visitors to the municipal-
104 ity or county in which such convention and visitor's bureau
105 or visitor's and convention bureau is located.

106 (2) *Convention center.* — “Convention center” means a
107 convention facility owned by the state, a county, a municipal-
108 ity or other public entity or instrumentality and shall include
109 all facilities, including armories, commercial, office, commun-
110 ity service and parking facilities, and publicly owned facilities
111 constructed or used for the accommodation and entertainment
112 of tourist and visitors, constructed in conjunction with the
113 convention center and forming reasonable appurtenances
114 thereto.

115 (3) *Fiscal year.* — “Fiscal year” means the year beginning
116 July first and ending June thirtieth of the next calendar year.

117 (4) *Net proceeds.* — “Net proceeds” means the gross
118 amount of tax collections less the amount of tax lawfully
119 refunded.

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

125 (6) *Recreational facilities.* — “Recreational facilities” means
126 and includes any public park, parkway, playground, public
127 recreation center, athletic field, sports arena, stadium, skating
128 rink or arena, golf course, tennis courts and other park and
129 recreation facilities, whether of a like or different nature, that

130 are owned by a county or municipality.

131 (7) *Regional travel council.* — “Regional travel council”
132 means a nonstock, nonprofit corporation, with a full-time staff
133 working exclusively to promote tourism and to attract
134 conventions, conferences and visitors to the region of this state
135 served by the regional travel council.

§7-18-15. Criminal penalties.

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

14 (b) Any person willfully violating any of the provisions of
15 this article shall for the first offense be guilty of a misdemea-
16 nor, and, upon conviction thereof, shall be fined not more than
17 five hundred dollars or imprisoned for a period of not more
18 than thirty days, or both fined and imprisoned. For each
19 offense after the first offense, such person shall be guilty of
20 a felony, and, upon conviction thereof, shall be fined not less
21 than one thousand dollars nor more than ten thousand dollars,
22 or imprisoned in the penitentiary not less than one nor more
23 than three years, or in the discretion of the court be confined
24 in the county jail not more than one year, or both fined and
25 imprisoned.

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

30 (d) Proceedings against any person under this section shall
31 be initiated in the county of this state wherein such person
32 resides if any element of the offense occurs in such county of

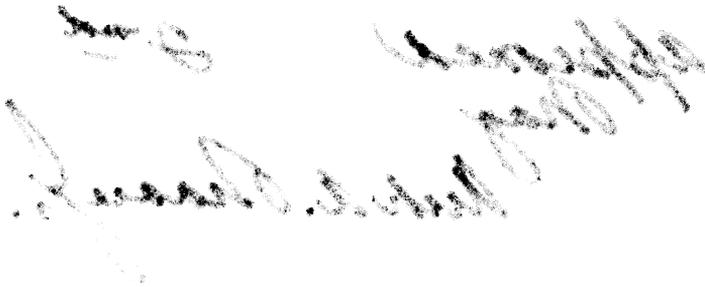
33 residence, or if no element of the offense occurs in such county
34 of residence, then in the county where the offense was
35 committed.

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

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

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

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

The bottom of the page contains several handwritten signatures and scribbles in dark ink, which are mostly illegible due to their cursive and overlapping nature.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Donnell E. Holmes
Chairman Senate Committee

Flores Fuller
Chairman House Committee

Originating in the House.

Takes effect July 1, 1985.

David C. Fuller
Clerk of the Senate

Donald T. Kopp
Clerk of the House of Delegates

Dan Tansh
President of the Senate

Joseph P. Albright
Speaker of the House of Delegates

The within *approved* this the *2nd*
May day of _____, 1985.

Hubert H. Parson, Jr.
Governor

PRESENTED TO THE

GOVERNOR

Date 4/25/85

Time 2:54 p.m.