

BEFORE THE COUNTY COMMISSION OF POCAHONTAS COUNTY

ORDER ESTABLISHING RULES, REGULATIONS AND ADMINISTRATIVE PROCEDURES FOR THE ASSESSMENT, COLLECTION AND REFUND OF HOTEL OCCUPANCY TAX

On or about the 7th day of April, 1987 the Pocahontas County Commission adopted and implemented the hotel occupancy tax within the unincorporated areas of Pocahontas County. On the 17th day of July, 2007 the Pocahontas County Commission established the rate of the hotel occupancy tax at six percent (6%) of the consideration paid for occupancy of sleeping accommodations within Pocahontas County.

The County Commission does hereby promulgate these rules, regulations and administrative procedures for the assessment, collection and refund of the hotel occupancy tax:

1) General:

A) The provisions of WV Code, §7-18-1 through §7-18-15 are hereby adopted in toto as if set out herein verbatim;

B) All words used herein shall have the meaning therefore as set out in WV Code, §7-18-3 and §7-18-15 and where no definition is set out, such word shall have its ordinary and common meaning;

C) Any and all persons, firms and corporations who offer to the public for consideration sleeping accommodations are subject to the hotel occupancy tax;

D) The hotel occupancy tax is due and payable on a monthly basis and a hotel occupancy tax return must be filed on a monthly basis on or before the 15th day of the month reporting and tendering the hotel occupancy tax collected for the preceding month.

2) Administration:

A) The Sheriff of Pocahontas County shall be the County's agent for the administration and collection of the hotel occupancy tax;

B) The Assessor of Pocahontas County shall promulgate and issue all return forms and refund forms; The Assessor shall submit any and all forms to the County Commission for approval;

C) All return forms and payments for hotel occupancy tax shall be filed with and received by the Sheriff;

D) The Sheriff shall retain copies of all returns and refund forms filed for hotel occupancy tax for a period of three (3) years;

E) The Sheriff shall handle the collection, payout and refund of hotel occupancy tax in the same manner as all other taxes and charges collected by the Sheriff;

F) The Sheriff and/or the Assessor may and are hereby authorized to enter into any cooperative agreements with the municipalities located within Pocahontas County for the assessment, collection and refund of hotel occupancy tax within such municipalities;

G) The Sheriff, in addition to the collection of all hotel occupancy tax due to the County, the Sheriff is hereby authorized and shall collect all fines, fees, penalties and interest set forth in this order and due upon all hotel occupancy tax returns and payments and shall have the authority to distrain property, initiate civil suits, initiate criminal investigations and to compromise, where appropriate, hotel occupancy tax amounts due and payable. In the discharge of these duties the Sheriff is hereby authorized to investigate compliance with this order; conduct surveys and questionnaires relating to liability under this order and compliance herewith; and, to conduct random examinations and audits to insure compliance with this order;

H) The Sheriff shall, in January of each year following adoption of this order, publish in the Pocahontas Times a notice advising as to the hotel occupancy tax and the application and compliance requirements of this order. Specifically, such notice shall inform all persons that the hotel occupancy tax applies to, "any person who offers to the public for consideration sleeping accommodations which includes but is not limited to boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins, tourist homes, and private homes providing three (3) or more rooms or private homes providing less than three (3) rooms for more than ten (10) days in a calendar year." Such notice shall include a statement as to the civil and criminal liability for failure or refusal to comply with this order to collect, report and pay over hotel occupancy tax due the county. The Sheriff shall submit such notice to the County Commission for approval. The Sheriff may, after consultation and approval of the County Commission declare an "amnesty" period for persons required to comply with this order and had heretofore failed to do so whereby such persons may, without exposure to prosecution, properly register with the Sheriff and to pay any and all amounts due the County;

I) The Sheriff shall create and maintain a registry that shall contain all necessary information regarding all persons and entities within Pocahontas County subject to hotel occupancy tax and this order. The Sheriff may purchase and utilize such software as is available to enable the Sheriff to access and monitor rental sites on the internet to insure compliance with this order. The Sheriff is hereby authorized to create and promulgate such documents and forms needful and necessary for the enforcement of this order and shall submit such documents and forms to the County Commission for approval.

3) Compliance:

A) All persons (as defined by WV Code, §7-18-3) who offer to the public, sleeping accommodations for consideration and not specifically excluded under WV Code, §7-18-13, is subject to compliance with this order and liable for the hotel occupancy tax of Pocahontas County;

- B) The hotel occupancy tax shall be paid monthly to the Sheriff of Pocahontas County. The hotel occupancy tax shall be paid by the consumer on room occupancy only and collected by the person offering the sleeping accommodations and shall be set out separately on all documents and records of the transaction;
- C) All persons subject to this order shall pay all hotel occupancy tax due to Pocahontas County and shall be personally liable for failure or refusal to do so;
- D) All persons subject to this order shall maintain complete and accurate records of all hotel occupancy tax transactions and the same shall be made available to the Sheriff or the Sheriff's designee upon request at all reasonable times;
- E) All persons subject to this order shall file, with the Sheriff, on the form proscribed by the Assessor, a return on or before the 15th day of each month for the preceding month, setting out all hotel occupancy transactions for that month. Any person who shall fail to file on or before the 15th day of the succeeding month, a return for any month wherein hotel occupancy tax was accrued or paid in addition to the tax owed and any additions thereto, shall be subject to a late filing fine of \$15.00 per month until such return is properly filed with the Sheriff. From and after the filing of a return by any person subject to hotel occupancy tax for the first time, such person shall thereafter file a return for each and every month whether hotel occupancy tax is due or not until such time as such person is no longer subject to hotel occupancy tax;
- F) All persons subject to this order and therefore required to file a monthly hotel occupancy tax return shall also pay over to the sheriff all hotel occupancy tax collected by such persons on or before the 15th day of each month for the preceding month. Any person who shall fail to pay over to the Sheriff all hotel occupancy tax due on or before the 15th day of the succeeding month shall, in addition to the tax owed and any additions thereto, shall be subject to a late payment fine of \$15.00.
- G) In addition to the foregoing fines for late filing and late payment of hotel occupancy tax, there is hereby imposed a delinquency penalty of five percent (5%) on all hotel occupancy tax due for the delinquent period as well as an additional one percent (1%) delinquency penalty per month thereafter until paid;
- H) The Sheriff is hereby authorized to prepare and issue such notices of non-compliance or delinquency that the Sheriff deems to be in the best interest of Pocahontas County but the Sheriff is not required to issue any such notices;
- I) The Sheriff shall on a regular basis but no less than one (1) time a year present a report to the County Commission as to the status of the hotel occupancy tax for the County. Such report shall contain a statement as to collections of hotel occupancy tax, fines, penalties, enforcement efforts, criminal prosecutions and such other information deemed appropriate by the Sheriff or requested by the County Commission.

4) Enforcement:

A) The Sheriff shall have the power and authority to direct all persons subject to this order to produce to the Sheriff or the Sheriff's designee all books and records regarding sleeping accommodations offered to the public for consideration and/or all books and records of hotel occupancy tax. All person subject to hotel occupancy tax shall maintain such books and records required by this order for a period of three (3) years;

B) The Sheriff or the Sheriff's designee is hereby authorized to conduct at County Commission expense a preliminary review or limited routine audit of the books and records of any person who offers sleeping accommodations to the public for consideration and/or of all persons subject to this order. In the event the Sheriff or the Sheriff's designee shall determine that a full and complete audit of such books and records is warranted the Sheriff is hereby authorized to contract with the State Auditor or other auditing service to conduct such audit(s). In the event any such audit shall disclose a violation of the hotel occupancy tax statute or this order, all costs associated with such audit, including the cost of the audit itself shall be assessed against the person or entity so audited and shall be paid, in full, by the 15th day of the month following the month within which an invoice for such costs are provided to such person or entity by the Sheriff. Any person or entity who shall fail to pay such costs on or before the 15th day of the month following the month wherein the person or entity is provided an invoice therefore by the Sheriff, shall be subject to a fine of \$500.00 which shall be in addition to all other amounts due under this order;

C) The failure or refusal of any person subject to the hotel occupancy tax to produce all records for examination when demanded by the Sheriff or the Sheriff's designee or for audit purposes shall subject such person to a non-compliance fine of \$100.00 per day until full compliance. The Sheriff or the Sheriff's designee shall prepare and provide to the person a letter setting out all items needful and necessary for examination or audit and set out therein a date and time certain for such examination and/or audit. The items requested in such letter and the date set forth in such letter shall establish the basis for any fine;

D) All persons subject to hotel occupancy tax and this order shall bare the legal responsibility to properly and timely register as such with the Sheriff of Pocahontas County; to properly and timely file with the Sheriff the monthly return established by the Assessor; and, to properly and timely remit all hotel occupancy tax due to Pocahontas County as required herein. In the event the Sheriff shall determine by investigation any willful violation of the hotel occupancy statute or this order the Sheriff shall forthwith provide such information and investigation to the Prosecuting Attorney for prosecution of such person under WV Code, §7-18-15 and the Prosecuting Attorney shall pursue all appropriate criminal penalties set out therein. Such prosecution shall be in addition to any and all fines and monetary penalties set out in this order;

E) The County Commission reserves the right to pursue or direct the pursuit of any and all civil remedies provided for in the hotel occupancy statute including injunctive relief against any person subject to the hotel occupancy tax statute and this order. Said civil

remedies and/or injunction shall be in addition to any and all fines, monetary penalties and/or criminal penalties provided for in the hotel occupancy tax statute and this order.

5) Refunds:

- A) The Assessor shall create and establish forms for refunds allowable under the hotel occupancy tax statute and shall make such forms available to the public;
- B) The Sheriff shall establish a procedure for refunds allowable under the hotel occupancy tax statute and shall inform the public of such procedure upon request;
- C) The Sheriff shall conduct a proper accounting upon any request for refund and maintain a ledger which memorializes all payments made and refunds requested and granted under the hotel occupancy tax statute.

The foregoing rules, regulations and administrative procedures shall control the assessment, collection and refund of hotel occupancy tax for the unincorporated areas of Pocahontas County and shall be effective as of the 7th day of November, 2017.

The Pocahontas County Commission

By 
William S. Beard, Jr.
Its President