

Ordinance Number 1437

Ordinance Amending Chapter 3, Articles 791.01 and 791.04 of *Code of Ordinances of the City of Weirton, West Virginia* and making the same retroactive to July 1, 2004

An ordinance of the city of Weirton, Hancock and Brooke Counties, West Virginia, for the purpose modifying existing legislation on the subject of Business and Occupation tax on manufacturing by means of inserting a definition of the word "manufacturing" into *The Code of Ordinances of the City of Weirton, West Virginia* Chapter 3, Article 791.01, and modifying Chapter 3 Article 791.04 to assess the said tax and provide a threshold amount below which gross income the tax need not be paid. The tax shall be imposed at the rate often cents per one hundred dollars (.1%) of gross sales on manufacturers with gross sales of Twenty-Five Million Dollars (\$25,000,000.00) or more per quarter-year. Said tax shall be retroactive to the first day of the city's current fiscal year, or July 1, 2004. The City Council of the City of Weirton, Hancock and Brooke Counties, West Virginia has authority pursuant to *West Virginia Code* section 8-13-5 and under the City of Weirton *Charter* at Article V, sections 38 and 44 to enact and ordain this Ordinance.

Purpose

The City has had a Business and Occupation Tax on the privilege of doing specified businesses in place since the passage of Ordinance Number 1276, on June 29, 2000. The purpose of the current Ordinance is to fix a rate at which manufacturers shall pay that tax and to set a threshold below which figure of gross income manufacturers need not pay it. To fulfill these purposes the instant Ordinance does the following:

1. Imposes a tax on the privilege of carrying on the act of manufacturing in the City retroactive to the first day of the City's current fiscal year in accord with the West Virginia Code; and
2. Assesses the said tax within the allowable limits of taxes of the type set by the legislature of West Virginia and;
3. Creates an understandable, usable definition of "manufacturing" for the assessment of the tax in order to avoid refusals to pay on the grounds of vagueness of language;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEIRTON, HANCOCK AND BROOKE COUNTIES, WEST VIRGINIA THAT:

1. Chapter 3, section #791.01 of the Code of Ordinances of the City of Weirton, West Virginia is hereby amended by inserting the following definition between the existing definitions for "Gross Proceeds of Sales" and "Prime Contractor:"

"MANUFACTURING. All activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale, profit, or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles. MANUFACTURING includes producing articles from raw materials or prepared materials by giving these matters new forms, quantities, properties, or combinations and includes such activities as making, fabricating, processing, refining, mixing, and compounding."

2. The first paragraph of Chapter 3, Article #791.04 of the *Code of Ordinances of the City of Weirton, West Virginia*, is hereby amended by the deletion of the figure "0%" and its replacement with the phrase "ten cents per one hundred dollars (.1%)."
3. The fourth paragraph of Chapter 3, Article 791.04 of the *Code of Ordinances of the City of Weirton, West Virginia* is hereby amended by deletion of that paragraph and its replacement with the following:

"The measure of the tax in this section is the value of the entire product manufactured, compounded or repaired in the city for sale, profit or commercial use, regardless of the place of sale or the fact that delivery may be made to points outside the city, provided, however, that the first Twenty-Five Million dollars (\$25,000,000.00) of value produced in each calendar quarter by such person shall be excluded from the measure of tax for that quarter

"It is further provided that no person shall pay the tax described in this article in an amount in excess of One Million, Fifty Thousand Dollars (\$1,050,000.00) in any tax year."

4. The provisions of this ordinance are severable, and if any section, clause, sentence, part, provision or application thereof shall be held illegal, invalid-or unconstitutional by any court of competent jurisdiction, such a decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, provisions or applications of this ordinance.
5. This Ordinance shall be effective thirty (30) days after passage in accord with the Charter of the City of Weirton. It shall be retroactive, and the tax described herein shall

be payable on the value of manufacturing done in the City on and after July 1, 2004, subject to the threshold which is provided at the revised fourth paragraph of Chapter 3, Article 791.04 of the *Code of Ordinances of the City of Weirton, West Virginia*.

First Reading: January 10, 2005

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January 25, 2005

Second Reading: February 7, 2005

Mayor

ATTEST

City Clerk