



Construction Projects Handbook

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INTRODUCTION TO THE CITY OF CHARLESTON MUNICIPAL BUSINESS AND OCCUPATION TAX FOR CONSTRUCTION PROJECTS

Before starting any contracting work in the City of Charleston, all contractors must be registered with the Office of the City Collector (“City Collector”), and be current on all city taxes and fees. The Office of the City Collector is responsible for tracking and collecting all taxes and fees due on any and all construction projects in Charleston. If you are not currently registered with our office, but intend to perform construction work in the city, please complete a *Business Registration Application* and return it to our office.

The purpose of this Project Handbook is to educate individuals performing contracting activities in the City of Charleston of their Business and Occupation (“B&O”) Tax responsibilities, as outlined in Chapter 110, Article II of the Code of the City of Charleston. Included in this handbook are pertinent sections of the state and city code regarding B&O taxes as they relate to contracting activities. In addition, we have also included examples of various forms and documents utilized by our office in our continuing effort to monitor and track your project throughout the construction process.

Any construction project with an estimated cost of \$50,000 or more will be monitored and tracked by our Tax Compliance staff. A Tax Compliance Officer will work closely with you throughout the duration of the project. In order to determine the proper amount of taxes and fees due, we will request complete lists of payments you received during the course of the project, as well as any and all payments made to subcontractors, service providers (architects, engineers, etc.), and suppliers, if applicable.

If you employ, utilize, or enter into a separate contract with any subcontractors, you should withhold at least two percent (2%) of the final contract amount from all subcontractors until a release is issued from the Collectors Office certifying that all taxes and fees due, including final payment/retainage, on this project have been reported/paid. Although the final payment/retainage may not have been issued to the subcontractor, the 2% B&O Tax on the final payment/retainage must be paid prior to the issue of an authorization to release funds. Please complete a *Subcontractor/Supplier/Installation & Service Provider Information Form* (see appendix D) for each contractor, supplier, installation & service provider you will be using.

We will make every effort to collect the taxes and fees due from your subcontractors. If they fail to report/pay their taxes and fees, you will be held responsible for their liability. Therefore, it is in your best interest as a general contractor, to make sure that all subcontractors that you hire are made aware of their B&O Tax liability to the City.

In addition to registering with the City Collector, all contractors must register with and obtain a contractor’s license from the City Building Department. If you have any questions regarding your contractor license, please contact the Building Department at 348-6833.

The City Collector and Building Department are located in City Service Center at 915 Quarrier Street, Suite 4. Their offices are open daily Monday through Friday, 8 a.m. until 5 p.m., except holidays. Both departments are ready to assist you with any questions you may have regarding your city responsibilities and obligations.

BUSINESS & OCCUPATION TAX OVERVIEW

The City of Charleston broadly imposes a Business & Occupation (“B&O”) Privilege Tax upon all persons for the act or privilege of engaging in business activities within the City. The term “business” shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. In determining whether a business is engaged in for “direct or indirect economic gain or benefit”, the lack of profit suffered in said activity is not relevant; nor is it material that the business was engaged in without profit as the primary motivation.

B&O Tax is measured by the application of rates against values of products, gross proceeds of sale, or gross income of the business, as the case may be. All persons engaging in business activities in Charleston are subject to the B&O Tax unless specifically exempted by Chapter 110, Article II, Section 110-63 of the Code of the City of Charleston.

Certain occupations and business activities are classified, and the classifications are significant inasmuch as the tax liability varies because of the different rates established for the types of business activities engaged in by the taxpayer. The business activity usually determines the taxable classification, and where different business activities are conducted, the taxpayer is liable for tax under each taxable classification involved. If you are uncertain as to your business activity or how your business should properly calculate the tax, please contact our office.

B&O Tax returns are due within one month following the end of the taxable quarter. Quarterly payments are due in April, July, October and January. Penalty and interest will be applied against any return that is received after these months. If you did not conduct business activity during a particular reporting period, you still **must file a “zero” return.**

BUSINESS & OCCUPATION TAX CONSTRUCTION FREQUENTLY ASKED QUESTIONS (FAQ'S)

Q. WHO IS REQUIRED TO FILE?

A. All persons who are engaged in business within the City of Charleston are required to file [B&O Tax returns](#). Persons domiciled outside the city limits who (a) lease tangible personal property to lessees in the municipality, or (b) **perform construction or installation contracts in the municipality**, or (c) render services to others therein, are doing business in the municipality, irrespective of the domicile of such persons, and irrespective of whether or not such persons maintain a permanent place of business in Charleston.

Construction, Supplier, Installation or Service Contracts in the City of Charleston:

When the business involves a construction, supplier, installation or service contract in the City of Charleston, no deduction from the measure of the tax is permitted, even though the contractor is domiciled outside Charleston, and maintains a place of business outside the municipality.

Construction, Supplier, Installation or Service Contracts Outside the City of Charleston:

When the business involves a construction, supplier, installation or service contract outside the City of Charleston, the tax does not apply to any part of the income derived therefrom, even though the contractor is domiciled in Charleston, and maintains a place of business therein, which may contribute to the contract performed outside the municipality.

Q. I WAS HIRED BY A GENERAL CONTRACTOR ON A PROJECT, AM I STILL REQUIRED TO PAY B&O TAXES ON THIS PROJECT?

A. Yes. You are responsible for B&O Tax on any and all gross receipts you receive for performing contracting activities Charleston. This includes any and all work performed for a general contractor. The revenue received must be reported and the taxes due must be paid to the City in the quarter that the funds are received.

Q. MY BUSINESS IS ALREADY REGISTERED WITH THE STATE OF WEST VIRGINIA. DO I STILL NEED TO REGISTER WITH THE CITY OF CHARLESTON?

A. Yes. The City is a separate and distinct entity from the State of West Virginia.

Q. WHAT IS GROSS INCOME?

A. Gross income means the gross receipts of the taxpayer, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any expense whatsoever.

Q. WHAT IS THE CONTRACTING TAX RATE?

A. Any and all gross receipts from contracting activities are taxed at two percent (2%).

Q. WHEN ARE B&O TAX RETURNS DUE?

A. The returns are due within one month following the end of the taxable quarter. Quarterly payments are due in April, July, October and January. Penalty and interest will be applied against any return that is received after these months.

Q. WHAT ARE THE PENALTY & INTEREST RATES?

A. The tax, if not paid when due, shall bear interest at the rate of 8% per annum from the date the return is due. The penalty shall be 5% for the first month, or fraction thereof, and 1% of the tax for each succeeding month or fraction thereof.

Q. AM I REQUIRED TO FILE EVEN IF I HAD NO INCOME DURING A PERIOD?

A. Yes. If you registered with the City, but have no business activity during a particular reporting period, you still must file a “zero” return.

Q. CAN I USE MY CREDIT OR DEBIT CARD TO PAY THE TAX?

A. Yes. Payments can be made on-line at <https://charlestonwvpayments.com>

Q. IS THERE A FEE FOR PAYING ON LINE?

A. Yes. The City of Charleston utilizes the services of Govolution, a third-party provider to process credit card, branded debit card and ACH payments via this website. Govolution will charge a non-refundable convenience fee per transaction. The convenience fee will vary, depending on the payment type and method of payment. The convenience fee is separate from the primary obligation you are paying and will appear on your statement as a charge to ‘Govolution’. For a complete list of fees please visit our website:

<https://charlestonwvpayments.com/payment-fees>

Q. WHAT IF I OVERPAID THE TAX, CAN I RECEIVE A REFUND?

A. Yes. Any taxpayer claiming to have overpaid any tax, interest, or penalty shall file a claim in writing to the City Collector within three years after the due date of the return or within two years from the date the tax was paid, whichever such period expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid.

Q. WHAT IF I UNDERPAY OR FAIL TO PAY THE TAX?

A. If you underpay or fail to pay the tax, the City Collector may, at any time, issue an assessment. Upon receiving an assessment, you have thirty (30) days to: (1) remit the assessment balance due, or (2) contest the assessment and file a Petition for Reassessment, either in person or via certified mail. If you fail to comply with either number (1) or (2) above, the assessment will become final and conclusive, and a lien will be filed against you.

STATE OF WEST VIRGINIA CODE

FOR

CONSTRUCTION PROJECTS

WEST VIRGINIA CODE: TITLE 110, SERIES 26

Title 110-26-2	Imposition of privilege tax
Title 110-26-11	Doing business within and without the municipality
Title 110-26-1a.20	Definitions
Title 110-26-2e	Contracting

West Virginia Code Title 110-26-2. IMPOSITION OF PRIVILEGE TAX

2.1 The municipal business and occupation tax is a tax imposed upon persons for the act of privilege of engaging in business activities. The tax is measured by the application of rates against values of products, gross proceeds of sale or gross income of the business, as the case may be.

2.1.1 All persons engaging in business activities in a municipality which has ordinances providing for a municipal business and occupation tax pursuant to the authority granted by the Legislature in W.Va. Code §8-13-5 are subject to the municipal business and occupation tax unless specifically exempted by statute or by these rules and regulations.

2.1.2 Certain occupations and business activities are classified, and the classifications are significant inasmuch as the tax liability varies because of the different rates established for the types of business activities engaged in by the taxpayer. The business activity usually determines the taxable classification, and where different business activities are conducted, the taxpayer is liable for tax under each taxable classification involved.

West Virginia Code Title 110-26-11. DOING BUSINESS WITHIN AND WITHOUT THE MUNICIPALITY

11.1 Persons domiciled outside a municipality who (a) lease tangible personal property to lessees in the municipality, or (b) perform construction or installation contracts in the municipality, or (c) render services to others therein, are doing business in the municipality irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in the municipality.

11.2 Persons domiciled outside a municipality who sell tangible personal property to persons in the municipality, may be doing business in the municipality, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in the municipality.

11.3 Persons domiciled in and having a place of business in a municipality, who (a) sell or lease personal property to buyers or lessees outside the municipality, or (b) perform construction or installation contracts outside the municipality, or (c) render services to others outside the municipality, are doing business both within and without the municipality. Whether or not such persons are subject to municipal business and occupation tax under the law depends upon the kind of business and the manner in which it is transacted. The following general principles govern in determining tax liability under the municipal business and occupation tax.

11.3.1 When the business involves a construction or installation contract in the municipality, no deduction from the measure of the tax is permitted, even though the contractor is domiciled outside the municipality and maintains a place of business outside the municipality which may contribute to the contract performed in the municipality.

11.3.2 When the business involves a construction or installation contract outside the municipality, the tax does not apply to any part of the income derived therefrom (except such part of the income as may be applicable to the manufacturer in the municipality by the contractor or articles used or incorporated in such construction or installation), even though the contractor is domiciled in the municipality and maintains a place of business therein which may contribute to the contract performed outside the municipality.

CODE OF THE CITY OF CHARLESTON

BUSINESS & OCCUPATION PRIVILEGE TAX

CODE OF THE CITY OF CHARLESTON: SECTION 110

Section 110-63	Computation of tax; quarterly payments; exemptions; return and remittance: extensions of time/payment plans: records, statements and investigations
Section 110-35	Revocation of Licenses and Permits
Section 110-145	Interests and penalties
Section 110-148	Final settlement with contractors; user personally liable.

Code of the City of Charleston Section 110-31. DEFINITIONS

Gross income means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the tangible property (real or personal) or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments, however designated, and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deduction on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expense whatsoever. "Gross income" of a banking or financial business is specified in section 110-60.

Contracting means to include the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

Prime contractor means a person engaged in the business of performing for others, contracts for the construction, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property either for the work or for a specific portion thereof. The terms "prime contractor" and "subcontractor" include, but are not limited to, persons performing labor and services in respect to the moving of earth or clearing of land, razing or moving existing buildings or structures even though such services may not be done in connection with a contract involving the constructing, repairing, or altering of a new or existing building or structure.

Subcontractor means a person engaged in the business of performing a like or similar service for persons other than consumers, either for the entire work or for a specific portion thereof.

Buildings or structures means and includes, but is not limited to, everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general and ordinary sense, but also tanks, fences, conduits, culverts, railroad tracks, overhead and underground transmission systems, tunnels, monuments,

retaining walls, bridges, trestles, parking lots and pavement for foot or vehicular traffic. *Contracting, repairing, decorating or improving* means of a new part of an existing building or structure or any part thereof, in addition to its ordinary meaning includes, but is not limited to, the installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of such installation.

Code of the City of Charleston Section 110-56. BUSINESS OF CONTRACTING

(a) Upon every person engaging or continuing within the city in the business of contracting, the tax shall be equal to two percent of the gross income of the business. A person performing any contracting activity shall report his/her gross income therefrom under the contracting classification of the municipal business and occupation tax return and shall receive no deduction from gross income on the account of any expenses incurred. All income derived from said activity shall be reported under the contracting classification, and the form of contract entered into by the parties shall not be determinative of taxable classification.

(b) Form of contract. Persons engaged in the contracting business shall report the entire gross income under the contracting classification, regardless of whether the contract is a turnkey contract, lump sum contract, per unit contract, cost plus fixed fee contract, or other contract having a similar basis. Gross income received from a contracting activity must be reported under the contracting classification and the manner of performance, basis of determining cost, fee or income or form of contract shall not alter the definition of contractor or of contracting and shall not change the taxability of such income from the contracting classification to another classification. A contracting activity remains a contracting activity regardless of what the parties may name it and regardless of the manner in which the parties may make payment and perform work.

(c) Costs. The measure of the tax under the contracting classification is gross income and includes all items of cost where the contractor has incurred liability. The cost of materials and labor can only be exempted from the measure of the tax in those cases where the contractor is not liable to vendors or workmen for payment. In those cases where the contractor contends that he/she has not incurred a municipal business and occupation tax liability because he/she acted solely as an agent for the owner, the burden of proving alleged principal-agency relationship shall be upon the contractor.

(d) Separate contracts for labor and materials. In cases where the contractor enters into a separate contract for the furnishing of materials by the contractor and a separate contract for erection of such materials by the contractor, the gross income from both contracts is taxable under the contracting classification, unless it can be provided by the contractor that passage of title of the materials was not dependent upon the erection of the materials by the contractor and that the sale of such materials is, in fact, a separate and distinct transaction, taxable under the municipal business and occupation tax law, as a retail or wholesale sale, as the case may be. The contract to furnish materials shall not be considered a separate and distinct transaction from the contract to erect the same, unless it is established by the contractor to be a complete arm's length transaction with no dependency existing between the contract for materials and the contract for erection. The burden of proving any alleged arm's length transaction shall be upon the contractor.

(e) Separate purchase orders. A separate purchase order for the furnishing of work or labor and a separate purchase order for the furnishing of materials which constitutes the contract(s) between the parties shall be treated in the same manner as set forth in the paragraph above.

(f) Prime and subcontractors. A prime contractor, one who furnishes work or both materials and work under a written or oral contract, for the construction, alteration, repair, decoration or improvement of a new or existing building or structure or any part thereof, or for the alteration,

improvement or development of realty, must report his/her gross income under the contracting classification without any deduction on account of any expenses incurred. If the prime contractor executes a contract with another for a portion of the job or project, the prime contractor receives no deduction from gross income on account of any payment made to the subcontractor. The subcontractor will also be taxed on his/her gross income under the contracting classification.

(g) Contract entered into with government. Gross income received by a person for contracting activities performed for the State of West Virginia, the federal government or any of their instrumentalities, agencies, boards, commissions or political subdivisions, etc., or performed for nonprofit organizations is taxable and shall be reported under the contracting classification. The fact that the owner is a governmental unit or a non-profit organization does not relieve the contractor, subcontractor, supplier or any other person from liability for municipal business and occupation tax on the full amount of gross income.

Code of the City of Charleston Section 110-63. EXEMPTIONS

(a) The provisions of this article shall not apply to:

(1) Insurance companies which pay the state a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the city, whether such income is in the form of rentals or royalties;

(2) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(3) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of W. Va. Code Ch. 60, Art. 7;

(4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;

(5) Production credit associations, organized under the provisions of the federal Farm Credit Act of 1933; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. Ch. 19, Art. 4;

(6) Any credit union organized under the provisions of Chapter 31 or any other chapter of the Code of West Virginia; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. Ch. 19, Art. 4;

(7) Gross income derived from advertising service rendered in the business of radio and television broadcasting;

(8) The gross income or gross proceeds of sale of a gasification or liquefaction of coal project in the demonstration, pilot or research states; provided, that prior to the commencement of operation of any such project, the tax commissioner of the state shall have first certified the project as eligible for such exemption; provided, further, that such exemption shall expire seven years from the date the project first receives gross income or gross proceeds from sales; and

(9) The gross income or gross proceeds of sale derived from sales or services by an itinerant vendor or a street vendor in cases where no itinerant vendor license or street vendor license is required by City Code Sections 18-613 or 18-1033.

(b) An organization is "charitable" for purposes of (4) above it satisfies both of the following criteria: (1) it is exempt from Federal Tax, under 26 U.S.C. § 501(c)(3), and (2) its purposes include relief of poverty, advancement of education, advancement of religion, promotion of health, governmental or municipal purposes, or other purposes that are beneficial to the community.

Code of the City of Charleston Section 110-81. TAX CUMULATIVE

(a) The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade, calling or activity. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are a condition precedent to exercising the privilege tax, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article.

(b) Computation of tax.

(1) The taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make a return reporting the tax for which he/she is liable for such quarter; sign it and mail it, together with any remittance due, in the form required by Section 110-82 of the amount of the tax to the office of the city collector. When the total tax for which any person is liable under this article does not exceed the sum of \$200.00 in any year, the taxpayer may pay the tax quarterly as aforesaid or, with the consent in writing of the city collector, at the end of the month next following the close of the tax year.

(2) The city collector, if he deems it necessary, based upon past experience with a taxpayer, based on the past practices of a taxpayer, based on the financial condition of the taxpayer, or based on the size of the contract, in order to insure payment of the taxes levied hereunder, may require return and payment under this section for other than quarterly periods. Furthermore, if the city collector deems it necessary to insure payment of the business and occupation tax, he may require a deposit to be paid by the taxpayer prior to when the taxes accrue and are otherwise payable. The amount of the deposit shall be determined and/or based upon the taxpayer's projected gross income or gross proceeds of sale for the applicable tax period. This deposit shall be paid to the office of the city collector, at a date and time, and in a manner determined by the city collector.

(3) Every contractor whose principal business location is outside of the city, shall register with the city collector prior to engaging in the performance of a contract in this city, and the city collector, if he deems it necessary, based on the past experience with a taxpayer, based on the past practices of a taxpayer, based on the financial condition of the taxpayer, or based on the size of the contract, in order to insure payment of the taxes levied hereunder, may also require the following:

(a) At the time of registration, each contractor shall deposit with the city collector six percent of the amount the contractor is to receive for the performance of the contract, which sum shall be held within a contractor's use tax fund pending the completion of the contract.

(b) In lieu of the six percent deposit, each contractor may request the approval of the city collector to provide, in the alternative, a corporate surety bond to be approved by the city collector as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of the tax due the city.

Code of the City of Charleston Section 110-82. RETURN AND REMITTANCE; TAX YEAR

(a) On or before 31 days after the end of the tax year, each person liable for the payment of a tax under Section 110-51 shall make a fourth quarter return, showing the gross proceeds of sale or gross income of business, trade, calling or activity, computing the amount of tax chargeable against him in accordance with the provisions of this article and transmit with his report a remittance in the sum required by this section, covering the remainder of the tax chargeable against him, in the office of the city collector. Such returns shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the president, vice president, secretary or

treasurer of a corporation, if made on behalf of the corporation. If made on behalf of a partnership, joint venture, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, group or unit shall take the oath on behalf of the taxpayer.

(b) The assessment of taxes herein made and the returns required therefore shall be for the year ending December 31. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on the basis other than the calendar year, he may with the written consent of the city collector, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

(c) All remittances of taxes imposed by this article shall be made to the city collector, in lawful money of the United States or by bank draft, certified check, cashier's check, money order or certificate of deposit, who shall pay the money into the city treasury, to be kept and accounted for as provided by law.

Code of the City of Charleston Section 110-83. EXTENSIONS OF TIME; PAYMENT PLANS

(a) The city collector, upon approval from city manager, may grant a reasonable extension of time for payment of tax or any installment, or for filing the fourth quarter return or quarterly return required pursuant to this article, on such terms and conditions that he may require. No such extensions shall exceed six months.

(b) The city collector, upon approval from city manager, may extend the time for payment of an amount determined as a deficiency for a period not to exceed 12 months from the date designated for payment of the deficiency. An extension of this time may be granted only where it is clearly established to the satisfaction of the city collector that the payment of a deficiency upon the date designated for payment would result in undue hardship.

(c) If any extension of time is granted for payment of any tax or deficiency, the city collector may require the taxpayer to furnish a bond or other security, in an amount not exceeding twice the amount for which the extension of time for payment is.

Code of the City of Charleston Section 110-84. RECORDS, STATEMENTS AND INVESTIGATIONS

(a) For the purpose of ascertaining the correctness of a tax return or an assessment for the purpose of making an estimate of any taxpayer's liability for the tax administered under this article, the city collector shall have the power to examine or cause to be examined, by any agent or representative designated by the city collector, any books, papers, records, memoranda or other documents bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge of the matters contained therein. In connection therewith, the city collector may take testimony and shall have the power to administer an oath to such person.

(b) The city collector may prescribe rules and regulations as to the keeping of records, the content and form of returns and the filing of copies of city business and occupation tax returns and determinations. The city collector may require any person, by notice served upon such person, to make such returns and keep such records as the city collector may deem sufficient to show whether or not such person is liable under this article for such tax.

Code of the City of Charleston Section 110-35. REVOCATION OF LICENSES AND PERMITS

(a) The city collector has the authority to revoke any and all licenses and permits issued by the

city in the event a licensee/permittee fails to file any city tax return or fails to pay any delinquent taxes, fees or any interest or penalty thereon due and owing to the city. The city collector has the authority to deny and prevent any and all licenses and permit privileges to those persons who are delinquent in paying taxes, fees or any interest or penalty thereon due and owing the city.

(b) In the event of revocation, the city collector will provide written notice to the licensee/permittee at least five days prior to the contemplated revocation and such notice shall be served by certified mail. The notice shall indicate the time and the place of the revocation review meeting, the general grounds of said contemplated revocation, and shall advise the licensee/permittee of his/her rights to appear at said hearing in person and represented by legal counsel, and to be heard orally upon the merits of his/her defense. The city collector may request legal advice from the city attorney's office, and adopt such procedures for its decorum and the dispatch of business at such hearings as he/she may regard advisable. The revocation decision of the city collector will be final; provided, that those licensees/permittees who are subject to administrative or judicial appeals, pursuant to Sections 110-113 through 110-115, may utilize these procedures in accordance with the Code, but will not be grounds to delay the revocation process.

(c) Each license or permit that has been revoked pursuant to this section may be re-issued upon payment of all delinquent B&O taxes, fees or any interest or penalty thereon due and owing to the city.

Code of the City of Charleston Section 110-145. INTEREST AND PENALTIES

(a) The tax imposed by this article, if not paid when due, shall bear interest at the rate of at least eight percent per annum from the due date of the return until paid. The city collector may charge an interest rate equal to the adjusted rate charged by commercial banks to large business, in the manner described in W. Va. Code § 11-10-17a.

(b) If any taxpayer fails to make the return or any quarterly installment required by this article, or make his return but fails to remit, in whole or in part, the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent of the tax for the first month, or fraction thereof, of delinquency, and one percent of the tax for each succeeding month, or fraction thereof of delinquency provided, that if such failure is due to reasonable cause, the city collector may waive, with final approval from the city manager, in whole or in part, these penalties. Additionally, if the failure to pay is due to fraud or intent to evade any such tax there shall be added an additional penalty of 25 percent of the tax owed, exclusive of penalties.

(c) Interest and penalties may be collected in the same manner as the tax imposed by this article.

Code of the City of Charleston Section 110-148. FINAL SETTLEMENT WITH CONTRACTORS; USER PERSONALLY LIABLE

(a) Any person contracting with a person engaged in a business or service taxed under this article shall withhold payment, in sufficient amount to cover taxes assessed by this article, in the final settlement of such contracts until the receipt of a certificate from the city collector to the effect that all taxes levied and accrued under this article against the contractor have been paid.

(b) If any person shall fail to withhold as provided herein, he shall be personally liable for the payment of all such taxes, and the same shall be recoverable by the city collector by appropriate legal proceedings.

**PROCEDURES FOR
AUTHORIZATION TO RELEASE
FINAL PAYMENT/RETAINAGE**

1. The general/prime contractor is the only one that may request an authorization to release final payment/retainage for their subcontractors.
2. A written request must be submitted to the Office of City Collector containing the following information:
 - a) The final contract amount(s) plus any amount(s) not under contract.
 - b) The date(s) and amount(s) of each payment made to all subcontractors.
 - c) The amount(s) held as final payment/retainage.
3. Upon receiving the aforementioned information from the general contractor, the Office of City Collector will request the following information from each subcontractor:
 - a) The final amount paid to you by the general/prime contractor (final contract amount, final paid to date and final payment/retainage).
 - b) The date(s) and amount(s) of each payment you received from the general/prime contractor, and the quarter the Business and Occupation Tax was reported/paid.
 - c) The names and addresses of any subcontractor(s) utilized, if applicable.

EXAMPLE:

<u>Date Received</u>	<u>Amount Received</u>	<u>Qtr. Reported</u>
1/06/04	\$2,000.00	1/04
6/10/04	\$3,000.00	2/04
Retainage	\$ 500.00	Not Reported

4. After receiving the requested information from the subcontractor(s), the Office of City Collector will send the general/prime contractor a *RELEASE APPROVAL* letter stating **all** B & O taxes have been reported/paid on the project, or a *RELEASE DENIAL* letter stating the tax, penalty and interest due on the project. A copy of this letter will also be sent to the subcontractor.