

# City of Follansbee

(<http://www.cityoffollansbee.net/>)

Follansbee Never Fails

## Municipal Home Rule Pilot Program Application



**Plan Made Available to Public: May 23, 2016**  
**First Publication of Notice of Public Hearing: May 27, 2016**  
**Second Publication of Notice of Public Hearing: June 3, 2016**  
**Public Hearing: June 27, 2016**  
**First Reading of Ordinance: June 13, 2016**  
**Second Reading of Ordinance: June 27, 2016**  
**Meeting of Municipal Home Rule Board: July 11, 2016**

# The City of Follansbee, West Virginia

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# Municipal Home Rule Pilot Program Phase III

## APPLICATION CHECKLIST

<b>SECTION I: APPLICANT INFORMATION</b>	
Page No.	
	General Information
	Municipal Classification
	Specific Issue(s) to be Addressed
	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

<b>SECTION II: NARRATIVE</b>	
Page No.	
	Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.
	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/ personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

<b>SECTION III: AFFIDAVITS</b>	
Page No.	
	Hearing Mandate Verification
	Publication Mandate Verification
	Ordinance Authorizing Submission of Plan
	Fiscal Impact Worksheets/Formulas (if revenue related)
	Attorney Opinion (application complies with statutory requirements)
	State of West Virginia Fees Statement (none outstanding)

# Municipal Home Rule Pilot Program Phase III APPLICATION

<b>SECTION I: APPLICANT INFORMATION</b>	
<b>A. General Information</b>	
Name of Municipality: <u>City of Follansbee</u>	
Certifying Official: <u>David P. Kurcina</u>	Title: <u>City Clerk</u>
Contact Person: <u>John A. DeStefano, Jr.</u>	Title: <u>City Manager</u>
Address: <u>PO Box 606</u>	
City, State, Zip: <u>Follansbee, WV 26037</u>	
Telephone Number: <u>304-527-1330</u>	Fax Number: <u>304-527-2615</u>
E-Mail Address: <u>follansbeecitymgr@comcast.net</u>	
2010 Census Population: <u>2985</u>	
<b>B. Municipal Classification</b>	
<input type="checkbox"/> Class 1 <input type="checkbox"/> Class II <input checked="" type="checkbox"/> Class III <input type="checkbox"/> Class IV	
<b>C. Category of Issues to be Addressed (please attach descriptions for applicable categories)</b>	
<input checked="" type="checkbox"/> Tax <input type="checkbox"/> Organization <input type="checkbox"/> Administration <input type="checkbox"/> Personnel <input type="checkbox"/> Other	

<b>SECTION II: NARRATIVE (written plan, including the following)</b>
<p>Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.</p> <p>Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.</p> <p>Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:</p> <ol style="list-style-type: none"> <li>1) Proposed solution(s) in one of the five areas (tax/administrative/organization/personnel/other)</li> <li>2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.</li> </ol>

<b>SECTION III: AFFIDAVITS</b>
Hearing Mandate Verification Publication Mandate Verification Ordinance Authorizing Submission of Plan Fiscal Impact Worksheets/Formulas (if revenue related) Feasibility Study (if taxes are proposed) Attorney Opinion (application complies with statutory requirements) State of West Virginia Fees Statement (none outstanding)

## SECTION II: NARRATIVE

### *Introduction/Executive Summary*

Follansbee is a city in Brooke County, West Virginia, located along West Virginia Route 2, which doubles as the City's Main Street, and adjacent to the east bank of the Ohio River. Follansbee is part of the Weirton–Steubenville, West Virginia-OH Metropolitan Statistical Area.

Follansbee is located:

- 19.39 miles north of Wheeling, West Virginia
- 6.33 miles south of Weirton, West Virginia
- 45.00 miles west of Pittsburgh, Pennsylvania
- 3.91 miles east of Steubenville, Ohio

Follansbee first received its municipal charter in 1906. Today it has an estimated population of 2,985 persons and an estimated median household income of \$46,501.00 (2013). The City is known throughout the State of West Virginia and the Ohio Valley as the home of Community Days and Christmas in the Park. Every summer and fall, thousands of people from West Virginia and surrounding areas travel to the City to attend these events. The City likes to think of itself as small town USA. Follansbee was recently rated as the ninth least expensive and nicest city in which to live in West Virginia.

At one time, Follansbee was home to Follansbee Steel, which is now gone, but some industry remains, including the Mountain State Carbon, LLC; Wheeling-Nisshin, Inc.; and Koppers Inc. The collapse of the steel industry and the downturn in manufacturing have adversely affected the City of Follansbee just as it has adversely affected many other cities in our region of the country. As a result of these changes, Follansbee is becoming more of a bedroom community, for residents who work in Pittsburgh, Pennsylvania; Steubenville, Ohio; and other places in West Virginia and the tristate area.

City officials are working to maintain the quality of services it provides to residents and businesses. For example, the City operates a public swimming pool, each of the City's five wards has its own playground, and athletic fields are abundant. The City has a police department, led by six-term Chief John Schwertfeger, and a volunteer fire department, led by Chief Larry Rea who has been Chief for over thirty years.

Follansbee has been under the leadership of City Manager John DeStefano for the past twelve years (after serving on City Council for over eight years) as well as second-term Mayor David Velegol and City Attorney Michael Gaudio, who has served in that capacity since 1988.

Follansbee's City Clerk is David Kurcina, who has served in that position for twelve years. The City has a six-member City Council comprised of Kathy Santoro (in her twenty-first year), Vito Cutrone, William Kocher, Scott McMahon, Rudy Cipriani (former Mayor and City Clerk for sixteen years) and John Casinelli, who has returned to City Council.

Like all cities and towns in the State of West Virginia, the City of Follansbee and its elected and appointed officials are committed to providing the best service possible to its residents and guests in the most cost effective way. Like many cities in the State, the largest revenue sources for the City are the B&O tax, property taxes and utility taxes.

The City's business tax base is largely industrial, but that base is shrinking. Follansbee has been fortunate to have in the City major corporations such as Wheeling-Pittsburgh Steel, Follansbee Steel, Wheeling-Nisshin Steel and Koppers Inc., which operated here for decades. In recent years, Follansbee Steel closed, Wheeling-Pittsburgh Steel Corporation changed ownership several times, each time ending up with fewer jobs and less revenue, and most recently Koppers Inc. announced plans to move the main part of its chemical operation to Illinois.

Due to downturns in the economy, all of these plants have been adversely affected. In order to positively impact these businesses, the City took a proactive approach and met with the industries to attempt to address their needs while keeping small businesses also in mind.

In 2004, the City enacted a cap on the amount of business and occupation taxes (B&O tax) that are payable annually by any business doing business in the City. The cap is presently \$350,000 per year. In addition, the City exempted all businesses from paying B&O tax on their first \$5,000 of gross income or gross proceeds of sales.

The City recognizes that a negative feature of the B&O tax is that it is measured by the gross receipts of a business without regard to the expenses of the business and whether or not the business makes a profit. The City believes that to retain its existing business tax base and to expand that base, the City needs to rely less on the B&O tax and more on other types of taxes. However, the West Virginia Code severely restricts the taxing authority of municipalities. For example, while the Code allows municipalities to impose up to a 1% sales and use tax, they may do so only if the municipality does not impose a municipal B&O tax. W. Va. Code § 8-13C-4. Approximately half of West Virginia's municipalities impose a B&O tax. Few, if any of them, including the City of Follansbee, simply cannot afford to completely repeal their B&O taxes in order to impose a 1% sales and use tax.

Enactment of the Municipal Home Rule Pilot Program, W. Va. Code § 8-1-5a, allows a municipality that participates in the Municipal Home Rule Pilot Program to, with the approval of the Municipal Home Rule Board, impose a 1% sales and use tax **provided** the municipality reduces its B&O tax. W. Va. Code § 8-1-5a(i)(14).

The City understands that in order for the Municipal Home Rule Board to authorize the City to impose a 1% sales and use tax, the City must agree to further reduce its B&O tax thereby lessening its burden on the business community beyond the substantial reductions that have already been enacted. The City also understands that if it imposes a 1% sales and use tax, then should the City subsequently repeal the B&O tax reductions proposed in this application, the City will be required to repeal its sales and use tax.

Follansbee is at a point where in order to maintain existing businesses and to attract new business to the City, it needs to be less regressive in its thinking and approach. A 1% sales and use tax will not produce a revenue windfall for the City, but imposing a 1% sales and use tax will allow the City to further reduce its B&O taxes and provide the City with additional revenue to improve its aging infrastructure.

### ***Municipal Classification***

With a population of approximately 2,985 residents, the City of Follansbee is classified as a Class III city.

### ***Specific Issues***

To better improve its delivery of essential services and to effectively reduce B&O tax burdens on current and future businesses, Follansbee is seeking authorization to enact a 1% sales and use tax and reduce its B&O taxes as outlined below, as permitted by the Municipal Home Rule statute.

Prior to enactment of the Municipal Home Rule Pilot Program, W. Va. Code § 8-1-5a, municipalities could impose a municipal sales and use tax only if it repealed in its entirety its B&O tax, as provided in W. Va. Code § 8-13C-4(b).

Follansbee's B&O taxes currently generate approximately \$1,150,000 in revenue annually which is deposited in the City's general revenue fund. Imposing a 1% sales and use tax would generate approximately \$238,000 annually, making elimination of the B&O tax neither practical nor feasible.

\$25 million gross taxable sales x 0.01	\$250,000.00
Less Tax Commissioner's administrative fee	<u>12,500.00</u>
Net sales and use tax collections	\$238,500.00

The City of Follansbee is severely underfunded when it comes to making necessary infrastructure repairs and replacements. For example, in the budget for the fiscal year ending June 30, 2016, only \$150,000 is budgeted for street milling and resurfacing. A like amount is budgeted for the fiscal year ending June 30, 2017.

Imposing a 1% sales and use tax would permit the budget for infrastructure repairs and replacement to increase by approximately \$50,000 annually and provide additional money to fund needed improvements to the City's fire department and to other departments that provide essential services to the City's residents and its commercial and industrial businesses.

**Plan**

- (1) Identify the specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner.**

Under current State law, the City of Follansbee may not enact a 1% sales and use tax unless it repeals in its entirety its business and occupation tax (B&O tax).

W. Va. Code § 8-13C-4(b) reads:

*(b) Alternative municipal sales tax.* -- On and after the first day of July, two thousand five, notwithstanding subsection (a) of this section, and in addition thereto in the case of a qualifying municipality, any municipality that does not impose, or ceases to impose, the business and occupation or privilege tax authorized by section five, article thirteen of this chapter has the plenary power and authority to impose, by ordinance, an alternative municipal sales and service tax at a rate not to exceed one percent, subject to the provisions of this article: *Provided, That:* (1) The tax does not apply to any purchase of tangible personal property, custom software or the results of taxable services in a transaction completed within the corporate limits of the municipality before the first day of July, two thousand eight, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(Emphasis added.)

- (2) Identify the problems created by the laws, acts, resolutions, policies, rules or regulations.**

Follansbee would like to change its tax structure by moving further away from its B&O tax regime, which is imposed at various rates on the gross receipts of a business from certain business activities engaged in within the corporate limits of the City of Follansbee and to rely more on consumption taxes, such as a 1% sales and use tax. However, under current law, W. Va. Code § 8-13C-4, the City cannot do this without repealing in its entirety its B&O tax which currently generates more than \$1.15 million annually for the City. It is not feasible for the City to repeal its B&O tax regime and replace it with a sales and use that will generate net revenue of \$238,000. Doing so would be irresponsible and not in the best interest of the City's residents and businesses.

**(3) Identify the proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations. (The specific municipal ordinance instituting the solution does not have to be included in the written plan.)**

The City proposes to impose a 1% sales and use tax that would be collected by the Tax Commissioner beginning July 1, 2017. At that time, the City's B&O taxes would be further reduced in the following ways:

1. The City would allow a credit against B&O tax of \$1,000 per year to restaurants and other businesses that sell prepared foods. The current rate of B&O tax paid by persons who make retail sales of tangible personal property is 0.204% of gross proceeds of sale. A \$1,000 tax credit would essentially exempt from B&O tax gross sales of prepared food \$490,196.08 per business per year. Currently, fourteen businesses sell prepared foods. This \$1,000 tax credit would essentially annually exempt from B&O tax gross proceeds of over \$6.8 million of sales of prepared foods by these fourteen businesses.

"Prepared food" is defined in W. Va. Code § 11-15B-2(b)(40)(A) and means:

- "(i) Food sold in a heated state or heated by the seller;
- "(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- "(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food."

"Prepared food," as above defined, "does not include food that is only cut, repackaged or pasteurized by the seller, and eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code of 2001 so as to prevent food-borne illnesses." W. Va. Code § 11-15B-2(b)(40)(B).

Additionally, "prepared food," as above defined, does not include:

- "(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in Sector 311, except Subsection 3118 (bakeries);
- "(ii) Food sold in an unheated state by weight or volume as a single item; or
- "(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas." W. Va. Code § 11-15B-2(b)(40)(C)."

2. In addition to the B&O tax reduction described in the preceding paragraph, the City is proposing to reduce its B&O tax rate on retail sales of motor vehicles from 0.204% to 0.11% of gross proceeds of sale.

## ***Discussion***

### **A. Business and Occupation Tax (B&O Tax)**

The City has imposed a B&O tax since 1970's. The B&O tax currently generates approximately \$1.15 million per year for the City's general revenue fund.



The maximum rates of B&O tax allowed by W. Va. Code § 8-13-5 are significantly higher than the rates of B&O tax imposed by the City of Follansbee. Additionally, **all** taxpayers, not just producers of natural gas, are allowed an annual \$5,000 exemption; and no taxpayer pays more than \$350,000 in B&O taxes per year.

The chart below compares the maximum B&O tax rates allowed by law with the City's current rates, which rates in almost every classification are below the maximum rate allowable under State law.

<b>Classification (Business Activity)</b>	<b>Maximum Rate of Tax (§8-13-5)</b>	<b>Follansbee Rate of Tax</b>
Production of Coal	1%	1%
Production of Sand/Gravel	3%	1.606%
Production of Oil/Slag	3%	1.606%
Production of Natural Gas	6%	3.193%
Limestone/Sandstone quarried or mined	1.5%	1.058%
Timber	1.5%	1.058%
Other Natural Resource Products	2%	1.058%
Manufacturing	0.3%	0.176%
Retailers	0.5%	0.204%
Wholesalers	0.15%	0.1%
Electric Power Companies		
Sales & demand charges for domestic purposes and commercial lighting	4%	1.48%
All other sales and demand charges	3%	1.48%
Water Companies	4%	1.508%
Natural Gas Companies	3%	1.587%
Toll Bridges	3%	1.058%
All other taxable public service businesses	2%	1.058%
Contracting	2%	0.84%
Amusements	0.5%	0.263%
Service Business or Calling	1%	0.426%
Rents and Royalties	1%	0.426%
Banking and other Financial Businesses	1%	0.489%
Electric Power Generation	0.3%	NA
Health Maintenance Organizations	0.5%	NA
Business of aircraft repair & maintenance	0.1%	NA

Except for the limitations prescribed in W. Va. Code § 8-13-5, the governing body of a municipality has "plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality." W. Va. Code § 8-11-5(a). This grant of plenary authority allows the governing body of a municipality to enact new classifications, to subdivide business activity classifications found in the State B&O tax law before July 1, 1987, and to specify rates of tax on each classification and sub-classification that do not exceed the maximum rate of tax allowed by State law.

## **B. Sales and Use Taxes**

The proposed 1% sales and use tax would apply to sales of tangible personal property and custom software and the furnishing of taxable services when the transaction is sourced to the City of Follansbee and the transaction is subject to State sales and use taxes.

Transactions that are exempt from State sales and use taxes would also be exempt from Follansbee's sales and use tax. The West Virginia sales tax law presently exempts more than fifty types of sales and service tax transactions. Transactions exempt from State sales/use taxes and, therefore, exempt from Follansbee's sale/use tax include, but are not limited to:

1. Sales of food intended for human consumption sold in grocery stores and other retail establishments, except for prepared foods and soft drinks.
2. Sales of prescription drugs.
3. Sales of personal services such as services of a beautician or barber.
4. The furnishing of professional services, such as those furnished by medical doctors, dentists, lawyers and certified public accountants.
5. Sales of public utility services, e.g., electricity, natural gas, telephone and water.
6. Services furnished by an employee to his or her employer.
7. Contracting services, e.g., improvements to real property.
8. Charges for accessing the Internet.
9. Sales of tangible personal property, custom software and service purchased by the buyer for resale as such.
10. Sales of tangible personal property and taxable services that are directly used or consumed in certain business activities including, but not limited to, manufacturing, communications, transmission, transportation, and producing natural resources.

Additionally, the Follansbee sales and use tax would not be imposed on sales of motor fuel, sales of motor vehicles, as defined below, or on satellite television services.

"Motor vehicle" is defined in W. Va. Code § 11-15-3c(e) and means "every propellable device in or upon which any person or property is or may be transported or drawn upon a highway including, but not limited to: Automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes[.]"

["Motor vehicle"] does not include: Modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy; devices operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this code; trucks, truck tractors and road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or greater: *Provided*, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment defined in section one, article one, chapter seventeen-a of this code; Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or greater does not subject the sale or

purchase of the vehicle to the consumer sales and service tax imposed by section three of this article.

Follansbee's sales and use taxes would be administered, collected and enforced by the State Tax Commissioner. Retailers that collect Follansbee's sales and use tax will remit the tax to the State Tax Commissioner at the same time that State sales and use taxes are remitted. Retailers will not remit the tax to the City, and no sales and use tax returns will be filed with the City of Follansbee. The Tax Commissioner charges a fee equal to 5% of the sales and use tax collected for the City.

The City estimates that a 1% sales and use tax will generate approximately \$238,000 annually.

Estimated annual City sales/use tax	\$250,000
Less Tax Commissioner's administrative fee	<u>\$ 12,500</u>
Estimated net sale/use tax revenue	\$238,000

The City determined this amount by examining total gross proceeds of sales reported under the retail sales classification on the B&O tax return for the calendar year 2015. This amount was then reduced by:

1. Estimated retail sales of food intended for human consumption sold in grocery stores, convenience stores and other stores;
2. Estimated retail sales of prescription drugs;
3. Estimated retail sales of motor fuel; and
4. Estimated retail sales of motor vehicles.

### **SECTION III: ATTACHMENTS**

- [A] Hearing Mandate Verification
- [B] Publication Mandate Verification
- [C] Ordinance Authorizing Submission of Plan
- [D] Fiscal Impact Worksheets/Formulas (if revenue related)
- [F] Feasibility Study (if taxes are proposed) [See next page]
- [G] Attorney Opinion
- [H] State of West Virginia Fees Statement (none outstanding)



CITY OF  
**FOLLANSBEE**  
WEST VIRGINIA

872 Main Street, P.O. Box 606  
Follansbee, WV 26037  
(304) 527-1330

**APPENDIX A**

**Verification of Compliance with Public Hearing Mandate**

Municipalities are required to hold a public hearing on their written home rule plans, or on an amendment to a previously submitted written home rule plan, before adopting an ordinance authorizing submission of the written plan, or plan amendment, to the Municipal Home Rule Board.

Notice of the public hearing must be given at least 30 days **before** the day of the public hearing by publication of a Class II legal advertisement in a newspaper of general circulation in the municipality.

A Class II legal advertisement is published once a week for two successive weeks. The legal advertisement may be published any day of the week except a Sunday.

The submission to the Municipal Home Rule Board must include verification of compliance with this publication requirement.

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Hearing Mandate Verification

City of Follansbee  
Office of the City Clerk  
P. O. Box 606  
872 Main Street  
Follansbee, WV 26037

I, the undersigned City Clerk of Follansbee, West Virginia, do hereby certify that on June 27, 2016, at 7:00 pm, a Public Hearing was held on the City's proposed written home rule plan (or the proposed amendment to a previously submitted written plan) in conformity with the requirements of W. Va. Code § 8-1-5a (2013).

Attached are true, correct and complete copies of page one of the Follansbee City Council Agenda, evidencing the Public Hearing and the signature of citizens who spoke either in favor of or against the written plan and its submission to the Municipal Home Rule Board pursuant to Bill No. 2016-2.

Witness the signature of the undersigned City Clerk of the City of Follansbee, West Virginia, and the seal of the City, this 5th day of July, 2016

David P. Kurcina  
City Clerk

FOLLANSBEE NEVER FAILS

Sign in sheet for Public Hearing  
on Home Rule June 27, 2016 7:00 PM

1 J. W. Schmitt A. Cliff

2 E. M. M. J.

3 J. M. M.

4 Bill Jackson

5

6

7

8

9

10

**APPENDIX A**

**Verification of Compliance with Public Hearing Mandate**

**Attachment 2 Public Hearing Mandate Verification**

[This attachment is a photocopy of the Sign in Sheet for the Public Hearing on the Proposed Written Plan.]

**PUBLIC HEARING**

June 27, 2016 7:00 PM

The purpose of this public hearing is to receive comments from the public regarding this City's written plan to participate in the Phase II of the Municipal Home Rule Pilot Program and Bill No. 2016-2, which authorizes the Mayor to submit the written plan to the Municipal Home Rule Board.

**In favor of:**

- |                        |           |
|------------------------|-----------|
| 1. <u>Bill Johnson</u> | 6. _____  |
| 2. _____               | 7. _____  |
| 3. _____               | 8. _____  |
| 4. _____               | 9. _____  |
| 5. _____               | 10. _____ |

**Opposed to:**

- |          |           |
|----------|-----------|
| 1. _____ | 6. _____  |
| 2. _____ | 7. _____  |
| 3. _____ | 8. _____  |
| 4. _____ | 9. _____  |
| 5. _____ | 10. _____ |



**CITY OF**  
**FOLLANSBEE**  
WEST VIRGINIA

**Special Meeting Notice**  
**Monday June 27, 2016**  
**7:00 PM**  
**Council Chambers**  
**Called by Mayor Velegol**

**OFFICE OF THE CITY MANAGER**  
**JOHN DeSTEFANO, JR.**  
872 Main Street, P.O. Box 606  
Follansbee, WV 26037  
304-527-1330  
follansbeecitymgr@comcast.net

**Agenda:**

- 1. Home Rule Public Hearing**
- 2. Second Reading and Vote to submit application for Home Rule**

**Notified**

**Mayor David Velegol**  
**City Attorney Michael Gaudio**  
**City Clerk David Kurcina**  
**City Manager John DeStefano**  
**Council Vito "Skip" Cutrone**  
**Council Bill Kocher**  
**Council Kathy Santoro**  
**Council Rudy Cipriani**  
**Council Scott McMahon**  
**Council-at-Large John Casinelli**  
**Phone call to all City residents**  
**Herald Star Newspaper**  
**Brooke Review News**  
**WTOV 9**  
**WTRF 7**

**FOLLANSBEE NEVER FAILS**

**CERTIFICATE  
OF  
PUBLICATION**  
The Brooke County Review  
Brooke County  
Wellsburg, West Virginia

**NOTICE OF PUBLIC HEARING ON  
CITY OF FOLLANSBEE'S  
MUNICIPAL HOME RULE PLAN  
APPLICATION**

Notice is hereby given that a public hearing will be held on the City of Follansbee's proposed Municipal Home Rule Plan Application at a special meeting of the City Council to be held on June 27, 2018 at 7:00 p.m. at Council Chambers in the City Building, 872 Main Street, Follansbee, West Virginia. The purpose of the public hearing is to discuss the proposed Home Rule Plan Application. Any interested citizen may attend the public hearing and present comments concerning the Home Rule Plan Application, and all comments shall be considered and utilized by the City Council in the City's application for acceptance into the Municipal Home Rule Pilot Program.

The second reading of the ordinance authorizing the City of Follansbee to submit its Municipal Home Rule Plan Application will take place on June 27, 2018 immediately following the public hearing. Information concerning the City of Follansbee's Municipal Home Rule Plan Application may be viewed at the City Clerk's office in the City Building, Monday-Friday between the hours of 8 a.m and 5 p.m., and may also be viewed online at [www.cityoffollansbee.net](http://www.cityoffollansbee.net). Written comments concerning the Home Rule Plan Application may be addressed to John DeStefano, City Manager, City Building, PO Box 606, Follansbee, WV 26037, or hand delivered to him at the City Building, 872 Main Street, Follansbee, West Virginia.

Dated May 23, 2018

*/s/ Dave Kurcina*  
City Clerk

BCR 05/27 - 06/03/16

MAY 08 2018  
CITY OF FOLLANSBEE

I, Jonathan M. McGoldrick, general manager of the Brooke County Review, a newspaper of general circulation in Brooke County, West Virginia, published in Wellsburg, hereby Certify that the attached advertisement was duly published in said Newspaper for 2 successive week(s) in issues of

5/27 & 6/3/16

Given under my hand this 3<sup>rd</sup> day of June 2016

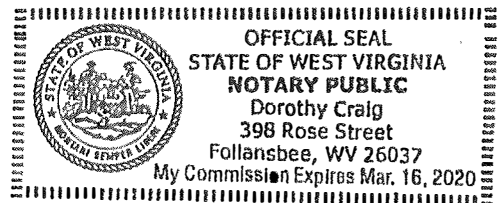
*Jonathan M. McGoldrick*  
General Manager of the Brooke County Review

Printer's Fee \$ 73.17

Invoice # 2183

Subscribed and sworn to this 3<sup>rd</sup> day of June, 2016

*Dorothy Craig*  
Notary Public



My commission expires 3-16-2020



... must show these equivalent studies or designs in the past ten years that were greater than \$1.0MM in construction costs.

BCR 05/20 - 05/27/18

**ORDER OF PUBLICATION**

**FAMILY COURT OF BROOKE COUNTY, WEST VIRGINIA**

IN RE CHILDREN OF:

CIVIL ACTION NO.18-D-58

ROBIN MURPHY and PETITIONER

RUSTY CLEVENGER RESPONDENT

**THE OBJECT OF THIS SUIT IS TO OBTAIN CUSTODY.**

To the Above Named Respondent:

It appearing by affidavit filed in this action that Rusty Clevenger, is a non-resident of the State of West Virginia, it is hereby ordered that he serve upon Robin Murphy, Petitioner, whose address is 3349 Apple Pike Ridge, Wellsburg, WV 26070 an Answer, including any related counterclaim or defense you may have to the Petition for Custody filed in this action on or before June 28, 2018. If you fail to do so thereafter judgment, upon proper hearing and trial, may be taken against you for the relief demanded in the Petition. A copy of said Petition can be obtained from the undersigned Clerk at her office.

Entered by the Clerk of said Court May 17, 2018.

GLENDIA BROOKS Clerk of Court

BY *Charmaine A. Balzano* Deputy

BCR 05/27 - 06/03/18

**FOR SALE**

The Brooke County Commission asks for sealed bids on a 1998 Chevy Blazer and a 2001 Dodge Pick-Up which are available for inspection at the Brooke County Courthouse, Main Street, Wellsburg, WV. The vehicles will be sold as is with the Commission having the right to reject any or all bids.

Submit bid by June 17, 2018 to 201 Courthouse Square, Wellsburg, WV 26070 and write CAR BID on the outside of envelope.

Timothy Ennis, President Brooke County Commission

BCR 05/27 - 06/03/18



Robert Pennington, Deputy State Highway Engineer - Planning and Programming

BCR 05/27 - 06/03/18

**NOTICE OF PUBLIC HEARING ON CITY OF FOLLANSBEE'S MUNICIPAL HOME RULE PLAN APPLICATION**

Notice is hereby given that a public hearing will be held on the City of Follansbee's proposed Municipal Home Rule Plan Application at a special meeting of the City Council to be held on June 27, 2018 at 7:00 p.m. at Council Chambers in the City Building, 672 Main Street, Follansbee, West Virginia. The purpose of the public hearing is to discuss the proposed Home Rule Plan Application. Any interested citizen may attend the public hearing and present comments concerning the Home Rule Plan Application, and all comments shall be considered and utilized by the City Council in the City's application for acceptance into the Municipal Home Rule Pilot Program.

The second reading of the ordinance authorizing the City of Follansbee to submit its Municipal Home Rule Plan Application will take place on June 27, 2018 immediately following the public hearing. Information concerning the City of Follansbee's Municipal Home Rule Plan Application may be viewed at the City Clerk's office in the City Building, Monday-Friday between the hours of 8 a.m. and 5 p.m., and may also be viewed online at [www.cityoffollansbee.net](http://www.cityoffollansbee.net). Written comments concerning the Home Rule Plan Application may be addressed to John DeStefano, City Manager, City Building, PO Box 806, Follansbee, WV 26037, or hand delivered to him at the City Building, 672 Main Street, Follansbee, West Virginia.

Dated: May 23, 2018

*/s/ Dave Kurcina* City Clerk

BCR 05/27 - 06/03/18

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GLENDIA BROOKS  
Clerk of Court

*Glendia Brooks*  
Deputy

BCR 05/27 - 06/03/16

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Dated May 23, 2016

*Isl Dave Kurcina*  
City Clerk

BCR 05/27 - 06/03/16

#### FOR SALE

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Submit bid by June 17, 2016 to 201 Courthouse Square, Wellsburg, WV 26070 and

SENECA TRUSTEES, INC.  
5000 Coombs Farm Drive, Suite 104  
Morgantown, WV 26508  
(304) 413-0044  
(304) 292-2918  
Toll free: (888) 534-3132  
Reference File No. 44222

BCR 06/03 - 06/10/16

#### LEGAL NOTICE OF THE FILING OF A DECLARATORY JUDGMENT ACTION

The object of this suit is to seek a declaratory judgment requesting that the Court declare that a prohibition concerning a certain lot set forth herein below indicating that ownership of the same revert to the La Belle Iron Works Corporation be declared null, void, and unenforceable against the Board of Education of the County of Brooke and declaring that the Board of Education of the County of Brooke is the sole and exclusive owner of said property.

TO: Any Claimant of a right or interest in said property;

A Petition for Declaratory Judgment has been filed in the Circuit Court of Brooke County, West Virginia, requesting that the above referenced restrictive covenants be declared null and void and no longer enforceable. The Petition has been assigned case number 16-C-54 A hearing in regard to the Petition has been scheduled before the Honorable Judge David J. Sims, Judge of the Circuit Court of Brooke County, West Virginia, on the 1st day of July, 2016, at 10:00 a.m. in the Ohio County Circuit Court located on the 5th floor, Room 503, of the Ohio County Courthouse which sits at City/County Building 1500 Chapline Street, Wheeling, West Virginia. Any party affected by the Petition or who wishes to object to the Petition should request that they be made a party to the matter and appear and defend their interests at the hearing scheduled above. You may do so by filing a Petition to Intervene in this legal proceeding by filing the same in the Circuit Court of Brooke County, West Virginia. Your request to Intervene must clearly state your identity, an address where legal process can be served upon you, and the basis for your interest in the matter. A copy of said Petition for Declaratory Judgment can be obtained from the Circuit Clerk of Brooke County, West Virginia.

The property which is the subject of this suit and for which a declaratory judgment action has been filed requesting that restrictive covenants be declared void is as follows:

A certain parcel of land located in Follansbee, Brooke County, West Virginia, containing 3.88 acres more or less located at or near the Follansbee Middle School designated by the Brooke County Tax Office as Map F14B, Parcel 53, and which property is currently owned by the Board of Education of the County of Brooke, which was conveyed by La Belle Iron Works, a West Virginia Corporation, to the Board of Education of the County of Brooke by Deed dated the 8th day of July, 1921, and contained in Deed Book 51 at page 330 a review of which will provide an exact description of the property which is the subject of this action.

If you fail to intervene or assert your rights in this regard, thereafter, an Order, upon proper hearing, may be entered by the Circuit Court declaring that these restrictive covenants are no longer applicable to the property set forth hereinabove.

BOARD OF EDUCATION OF THE COUNTY OF BROOKE, BY:

*David F. Cross*

David F. Cross

BCR 06/03 - 06/10/16

## Send Us Your Sports News and Photos!

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Wellsburg, WV 26070

E-Mail: [brookereviewnews@comcast.net](mailto:brookereviewnews@comcast.net)



HELEN CHAPPELL-ESTATE, WILDA BERTOVICH, EXECUTRIX, 16 WOOD STREET, AVELLA, PA 15312, MICHAEL E. GAUDIO, ATTORNEY, P.O. BOX 516, FOLLANSBEE, WV 26037; VIRGINIA J. STRICKER-ESTATE, SUZANNE BROWN, ADMINISTRATRIX, 1812 COLUMBIA AVENUE, STEUBENVILLE, OH 43952, VINCENT S. GURRERA, ATTORNEY, P.O. BOX 2308, WEIRTON, WV 26062; ROSS GRIGSBY-ESTATE, WILLIAM CIPRIANI, ADMINISTRATOR, 834 CHARLES STREET, WELLSBURG, WV 26070, WILLIAM CIPRIANI, ATTORNEY, 834 CHARLES STREET, WELLSBURG, WV 26070; MARGARET A. KOSTKA-ESTATE, KAREN OLSZEWSKI, ADMINISTRATRIX, 238 HIGHLAND HILLS DRIVE, FOLLANSBEE, WV 26037; JACK ROUPE-ESTATE, TINA CALLAHAN, EXECUTRIX, 2013 EVE DRIVE, STEUBENVILLE, OH 43952, RYAN C. ROKISKY, ATTORNEY, 3200 MAIN STREET, WEIRTON, WV 26062; ANDREW JOHN VARGO-ESTATE, NANCY LEE VARGO, EXECUTRIX, 87 CONLEY LANE, WELLSBURG, WV 26070; RUTH MARTIN JONES-ESTATE, JODY L. MARCHETTA, EXECUTRIX, 208 N. AVALON DRIVE, WINTERSVILLE, OH 43953, RYAN C. ROKISKY, ATTORNEY, 3200 MAIN STREET, WEIRTON, WV 26062.

SYLVIA J. BENZO, BROOKE COUNTY CLERK  
BY: KATHRINE L. SNYDER, DEPUTY CLERK

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[brookereviewnews@comcast.net](mailto:brookereviewnews@comcast.net)

or mail to:

Brooke County Review

55 Seventh Street

Wellsburg, WV 26070

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### Baked Spag

#### What You N

- 16 oz cooked spaghetti
- 1 c chopped onions
- 1 c green peppers
- 1 tbsp margarine
- 1 can (28 oz) chopped tomatoes
- 1 tsp oregano
- 1 clove garlic (or 1/2 teaspoon)
- 1 lb cooked ground beef substitute chicken (or sausage)
- 2 c mozzarella cheese
- 1 can cream of mushroom (use cream of chicken)
- 1/2 c water
- 1/2 c Parmesan cheese

Submitted by: P. J. [www.jl](http://www.jl)

Send



We

The Brooke County Review

Brooke County Review, LLC  
 55- 7th Street  
 Towne Square  
 Wellsburg, WV 26070  
 304-737-0946  
 304-737-0297

- 314

**INVOICE**  
**2183**

City of Follansbee  
 Mike Gaudio  
 P. O. Box 606  
 Follansbee, WV 26037

Deliver To:  
 Mike Gaudio  
 P. O. Box 606  
 Follansbee, WV 26037

Date: 06/03/2016	Number: 2183	Account Number: 27
Payment Terms: Net 30 Days		
Reference:		

Product#	Rate/Quan.	Product Description / Comments	Unit Price	T	Extended Price
Lg_WD2	362.25	Notice of Public Hearing	0.202	N	73.17
	1.00	Municipal Home Rule Application	0.00	Y	0.00
	1.00	Dates: 05/27 - 06/03/16	0.00	Y	0.00
01 440 40 20 ✓					

Total: \$73.17  
 0.000% Sales Tax: \$0.00  
 Grand Total: \$73.17  
 Balance Due: \$73.17

Paid Amount: \$0.00

JUN 03 2016  
 CITY OF FOLLANSBEE

Thanks for Your Patronage  
 We Appreciate Your Business  
 We Accept All Major Credit Cards

<b>Total Account Balance: 1,239.24</b>			
Current: 142.86	31-60: 284.17	61-90: 812.21	Over 90: 0.00

AN ORDINANCE AUTHORIZING THE CITY OF FOLLANSBEE TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD AN APPLICATION AND WRITTEN PLAN CONSISTENT WITH THE REQUIREMENTS OF W. VA. CODE §8-1-5a TO ALLOW THE CITY OF FOLLANSBEE TO PARTICIPATE IN PHASE III OF THE MUNICIPAL HOME RULE PILOT PROJECT

WHEREAS, the West Virginia Legislature, in 2007, enacted West Virginia Code §8-1-5a, known as the Municipal Home Rule Pilot Program;

WHEREAS, effective July 1, 2015, the Municipal Home Rule Pilot Program was expanded to include thirty-four municipalities including four Class IV municipalities; and

WHEREAS, the City of Follansbee, a Class III municipality, desires to submit an application to the Municipal Home Rule Board requesting approval to participate in Phase III of the Municipal Home Rule Pilot Project.

Now, therefore, be it ordained by the Council of the City of Follansbee, West Virginia:

SECTION 1: The Mayor is hereby authorized and directed to submit to the Municipal Home Rule Board, in accordance with the requirements of W. Va. Code §8-1-5a and application guidelines of the Board, the application and written plan, and to request the Board to approve the application and written plan thereby allowing the City of Follansbee to participate in Phase III of the Municipal Home Rule Pilot Program. The Mayor and the City Administration are further authorized to do all things reasonably necessary to obtain approval by the Board of the City's application and written plan.

SECTION 2: This Ordinance shall be effective immediately upon adoption.

Passed on First Reading: June 13, 2016

Adopted on Second Reading: June 27, 2016



Mayor David A. Velegol, Jr.



Recorder David P. Kurcina

**Section III Attachment**

**F. Feasibility Study (if taxes are proposed)**

**WV Municipal Home Rule Pilot Program Application – Feasibility Study – Follansbee, WV**

1. **B&O Tax** – The chart below compares the maximum B&O tax rates allowed by law with the City's current rates, which rates in almost every classification are below the maximum rate allowable under State law. The chart also shows for each classification the taxable gross receipts and the taxes currently collected for each classification of business activity. This tax generates approximately \$1.15 million annually.

Classification (Business Activity)	Gross Taxable Receipts	Maximum Rate of Tax (§8-13-5)	Follansbee Rate of Tax	Proposed Rate Reduction	B&O Tax Collected
Production of Coal	_____	1%	1%		_____
Production of Sand/Gravel	_____	3%	1.606%		_____
Production of Oil/Slag	_____	3%	1.606%		_____
Production of Natural Gas	_____	6%	3.193%		_____
Limestone/Sandstone quarried or mined	_____	1.5%	1.058%		_____
Timber	_____	1.5%	1.058%		_____
Other Natural Resource Products	_____	2%	1.058%		_____
Manufacturing	_____	0.3%	0.176%		_____
Retailers	_____	0.5%	0.204%		_____
New – Retail sales of motor vehicles	_____	0.5%	0.204%	0.11%	[ ]
Wholesalers	_____	0.15%	0.1%		_____
Electric Power Companies					
Sales & demand charges for domestic purposes and commercial lighting	_____	4%	1.48%		_____
All other sales and demand charges	_____	3%	1.48%		_____
Water Companies	_____	4%	1.508%		_____
Natural Gas Companies	_____	3%	1.587%		_____
Toll Bridges	_____	3%	1.058%		_____
All other taxable public service businesses	_____	2%	1.058%		_____
Contracting	_____	2%	0.814%		_____
Amusements	_____	0.5%	0.263%		_____
Service Business or Calling	_____	1%	0.426%		_____
Rents and Royalties	_____	1%	0.426%		_____
Banking and other Financial Businesses	_____	1%	0.489%		_____
Electric Power Generation	_____	0.3%	NA		_____
Health Maintenance Organizations	_____	0.5%	NA		_____
Business of aircraft repair & maintenance	_____	0.1%	NA		_____

Notes: (1) All businesses are annually exempt from paying Follansbee's B&O tax on the first \$5,000 of their gross receipts.

(2) No business pays City B&O tax in excess of \$350,000 per year.

(3) The City is proposing to reduce the rate of B&O tax on the privilege of making retail sales of motor vehicles from 0.204% to 0.11%. This reduction will reduce annual B&O tax collections by \$6,700.

(4) The City is also proposing to give each retailer of prepared foods an annual tax credit of \$1,000. This tax credit will reduce B&O tax collections by \$14,000 annually.

2. **Sales and Use Tax** – Imposing a 1% sales and use tax will generate net sales and use tax revenue of approximately \$238,000 annually.

\$25 million gross taxable sales x 0.01 rate of tax	\$250,000.00
Less Tax Commissioner's administrative fee	<u>12,500.00</u>
Net sales and use tax collections	\$238,500.00

We determined gross taxable sales by looking at the total gross proceeds of sales reported under the retail classification on the B&O tax return for the calendar year 2015. We then reduced this amount for:

- a. Estimated retail sales of food intended for human consumption sold in grocery stores, convenience stores and other stores;
- b. Estimated retail sales of prescription drugs;
- c. Estimated retail sales of motor fuel; and
- d. Estimated retail sales of motor vehicles.

The net amount of gross proceeds of sales subject to sales and use tax is estimated to be \$25 million.

retail	1,420,000	14,200
retail	5,263,000	52,630
retail	279,000	2,790
retail	576,000	5,760
food	2,664,000	26,640
retail	279,000	2,790
retail	26,070	261
food	718,000	7,180
food	346,000	3,460
food	152,000	1,520
	<hr/>	
	11,723,070	117,231

retail/food	749,187	7,492	<u>a lot of sales exempt</u>
Mullenbach Funeral Home		0	
James Funeral Home		0	
Signatures		0	new no report
food	453,594	44,000	
food	65,000	650	
retail/food	4,400,000	44,000	total excludes gas
retail/food	4,556,402	15,947	<u>total includes gasoline</u>
retail	2,024,229	20,242	total exclude scripts
retail	1,413,723	4,948	<u>total includes scripts</u>
retail	6,400,000	22,400	<u>total includes scripts</u>
food	6,004,000	19,813	estimate 33%
	<hr/>		
	25,316,948	172,001	

37,040,018	289,232
	<hr/>
	14,462 5% State
	274,770

Internet sales???

			<b>discount</b>
industry	401,988,887	350,000	707,500
industry	140,806,897	248,243	
industry	90,511,306	159,282	
	<hr/>		
	633,307,090	757,526	



## Sales and Use Tax Exemptions

The West Virginia sales and use tax laws contain many exemptions from the tax. This publication provides a brief, general description of sales and use tax exemptions. It does not discuss special rules regarding sales of gasoline and special fuels. It is not a substitute for tax laws or regulations.

When discussing sales/use tax exemptions it is important to consider the following general principles:

- All sales of tangible personal property or taxable services are presumed to be subject to tax.
- Tax must be collected unless a specific exemption applies to the transaction and proper documentation of the exempt status of the transaction is established by the purchaser and retained by the seller.
- Most individuals, businesses and organizations must pay tax on their purchases.
- The burden of proving that a transaction is exempt is on the person claiming the exemption and the vendor making the sale.
- Vendors who fail to collect and remit sales tax on taxable transactions or who fail to maintain proper records and documents with respect to such transactions will be held personally liable for payment of the amount of tax owed the State.
- Intentional disregard of the sales/use tax law or regulations is a serious matter and will result in monetary fines or criminal penalties.

There are several distinct types of exemptions and prescribed methods by which the exemptions must be claimed. Failure to follow the proper method in claiming an exemption may result in a transaction being taxable even though an exemption would exist if the proper method and documentation had been used.

### "Per se" Exemptions

The term "per se" means by, of or in itself. When used in the context of sales tax exemptions, it refers to exemptions that do not require a separate exemption document as proof of the exempt status. Generally the normal documentation of the transaction is sufficient proof of the "per se" exemption. Vendors who make sales which are "per se" exempt must maintain adequate records to substantiate the exemption.

The following sales and services are exempt "per se" from sales/use tax in West Virginia.

**Advertising** - Sales of radio or television broadcasting time, preprinted advertising circulars and outdoor advertising space, newspaper and magazine advertising space for the advertisement of goods or services are exempt from sales tax.

**College Room and Board** - Sales of room and board by public or private colleges or universities are exempt from sales tax when the sale thereof is for more than 30 consecutive days and is on a "contract basis" to students enrolled at the school.

**Contracting** - The construction, alteration, repair, improvement or decoration of real property is exempt from sales tax, but only when the work performed results in a "capital improvement" to the real property. All other construction trade activities are subject to the sales tax unless otherwise exempt. (See Publication TSD-310) Purchases made by contractors are generally taxable.

**Day Care Centers** - Sales of tangible personal property or services by day care centers are exempt from sales tax. Purchases of property or services by day care centers are generally taxable.

**Drugs, durable medical goods, mobility enhancing equipment and prosthetic devices dispensed upon prescription** - The purchase by a health care provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease are exempt from sales tax. Purchases of non-prescription drugs and other over-the-counter healthcare items remain subject to sales tax just as such items are taxable when purchased by a consumer from a retailer. See Publication TSD-425 for additional information.

**Educational Summer Camp Tuition** - Tuition charges made for attending educational summer camps are exempt from sales tax. This exemption does not apply to sales of tangible personal property or food by the camps.

**Employees** - Services provided by an employee to his or her employer that are within the scope of the employment contract are exempt from sales tax. Services provided by an employee to his employer that are outside of the employment contract and services provided by an "independent contractor" are taxable. A discussion of the employee/employer relationship can be found in Section 60 of the Department's Sales Tax Regulations.



**Federal and State Law** exempts certain organizations or activities from state sales taxes. These provisions are not found in our sales tax law or legislative rule, but are in the particular provisions of the law which deal with the specific organization or activity. A nonexclusive list of organizations that are exempt from sales tax by other sections of federal or state law are: federal or state chartered credit unions, regional transit authorities, county ambulance authorities, and non-profit public health care corporations. These provisions of federal and state law may exempt the organization or activity from sales tax on the sale of goods and services or on purchases of goods and services or both. However, this exemption applies only to the activities or transactions specifically excluded from taxation by the applicable statute. For example, state law imposes a pari-mutuel wagering tax on racing tracks in lieu of other taxes on its operations; nevertheless sales of food, beverages, programs, souvenirs and other items by racing tracks are subject to the sales tax.

**Food Stamps** - Sales of food lawfully purchased with federal food stamps or with drafts issued by the West Virginia special supplemental food program for Women, Infants And Children (WIC) are exempt from sales tax.

**Fraternities and Sororities** - Room and board charges made by fraternities and sororities to their student members are exempt from tax.

**Fund Raising Sales by Churches and Certain Non-Profit Organizations** - This exemption only applies to organizations which meet special requirements. For a complete discussion of this exemption see Publication TSD-320.

**Intangible Property** - The sales tax is not imposed on sales of intangibles (copyrights, royalties, notes, bonds, etc.).

**Isolated Transactions** - Sales of tangible personal property or taxable services by persons who are not in the business of making such sales, such as an individual selling his personal belongings or a law office selling its used furniture, are exempt from sales tax. Sales of tangible personal property may be made at yard sales without collecting sales tax provided such sales are held no more than 4 times per year and last no longer than 48 hours each. Persons who regularly and routinely sell goods at yard sales, flea markets or along the roadside are engaged in the business of selling. They must register with the State Tax Department and collect sales tax on such sales. Persons who are not engaged in the business of providing taxable services may also qualify for this exemption. For example, teenagers who occasionally mow lawns, baby sit or do odd jobs for their neighbors may be able to claim this exemption.

**Lottery Tickets** - Sales of West Virginia lottery tickets and materials by authorized lottery retailers, including sales of Lotto America tickets and materials, are exempt from sales tax.

**Motor Vehicles** - Contact the Division of Motor Vehicles by calling 304-558-3900 or visiting their website <http://www.dmv.wv.gov>.

**Newspapers** - Sales of newspapers are generally taxable. However, when they are delivered by route carriers they are exempt. Over the counter and vending machine sales are taxable.

**Personal Services** - Sales of services to the "person" of an individual, such as barbering, hairstyling, manicuring and massaging are exempt from tax. Generally this exemption does not apply to weight loss or physical fitness programs. Purchases of tangible personal property or taxable services made by personal service providers are generally taxable.

**Prescriptions** - Sales of drugs dispensed upon prescriptions issued by persons licensed to prescribe, and sales of insulin to consumers for medical purposes are exempt from tax. Sales of nonprescription medications are subject to the tax. Note, however, those purchases of prescription drugs and insulin by medical professionals for use in their medical services are taxable.

**Professional Services And Certified Public Accountants** - Sales of services recognized as "professional" under West Virginia law such as those provided by doctors, lawyers, engineers, architects and CPA's are not taxable. Purchases by professionals are taxable.

**Public Services** - Sales of services which are subject to the control of the West Virginia Public Service Commission, including sales of gas, steam and water delivered through pipes and mains and sales of electricity, most telephone services and services of regulated public or common carriers, bus and taxi services are exempt from tax. Mobile telephone and paging services that may not be regulated are subject to the tax. Sales of goods by regulated companies are generally not exempt.

**Real Property** - Sales tax is not imposed on the sale, lease or rental of real estate (land, houses, buildings and other structures attached to the land). Leases or rentals of real property to the same person or occupant for thirty or more consecutive days are exempt while rentals for less than thirty days are subject to the tax, such as daily parking rental.

**School Activities** - Sales of tickets for activities sponsored by elementary and secondary schools located within this State are exempt from sales tax. This exemption does not include activities sponsored by other organizations which merely occur on school property and are not sponsored by the school.

**Textbooks** - Sales of textbooks required to be used in any of the schools of the State, whether the books are sold directly to schools or students are exempt from tax. This exemption includes written course materials as well as audio and video materials so long as they are a required text of the school. This exemption does not apply to books or materials that are not textbooks, pens, pencils, paper or other school supplies.

Transportation - Charges for transporting passengers in interstate commerce, such as airplane tickets or bus tickets, are exempt from tax when the trip begins or ends outside the State.

## Exemptions

The following is a list of tax exemptions that may be claimed by presenting a properly executed Certificate of Exemption (Form F0003) to the seller of the tangible personal property or taxable services. If a vendor fails to obtain a properly completed exemption certificate from the purchaser or if the purchaser refuses to provide a certificate, the vendor must collect the tax and the purchaser must pay the tax. You cannot typically claim these exemptions by using a direct pay permit unless you are otherwise eligible to hold a direct pay permit.

**Purchase for Resale** - Purchases of tangible personal property or taxable services intended for resale, or for use in performing taxable services when such property becomes a component part of the property upon which the services are performed and will be actually transferred to the purchaser, are exempt from sales tax.

**Purchased By An Exempt Commercial Agricultural Producer** - Purchases of tangible personal property or taxable services for use or consumption in the commercial production of an agricultural product and purchases of propane for use in heating poultry houses are exempt from sales tax, but not purchases for construction of or permanent improvement of real property.

## Tax Exempt Organizations

**Government** - Purchases by the United States government or the State of West Virginia, including their institutions or subdivisions and county and municipal governments of West Virginia are exempt from sales tax. Purchases by employees of such government agencies while on government business are not exempt from sales tax unless such purchases are directly billed to and paid for by the government agency. Purchases by another state, or by an out of state county or municipal government are not exempt unless the other state or government organization provides the same exemption to the State of West Virginia and its institutions and subdivisions. Private persons doing business with the government may not claim this exemption.

**Certain Nonprofit Organizations** - Purchases by a corporation or organization which has a current registration certificate and which is exempt from federal income taxes under section § 501(c)(3) or (c)(4) of the Internal Revenue Code are exempt if the organization meets all of the requirements set forth in W. Va. Code § 11-15-9(f). For information concerning these requirements refer to Publication TSD-320.

**Schools** - Purchases by a school that has its principal campus in this State, is approved by the State of West Virginia to award degrees, and is exempt from federal and state income taxes under section § 501(c)(3) of the Internal Revenue Code are exempt from sales tax.

**Churches** - Purchases of services, equipment, supplies, food for meals and materials directly used or consumed by churches which make no charge whatsoever for the services they render are exempt from sales tax. These purchases must be paid for directly out of the church treasury.

## Sales of Certain Specific Services

Purchases of electronic data processing services and software related to such purchases are exempt from sales tax, but not purchases of data processing equipment, materials and supplies.

Purchases of services by one corporation, partnership or limited liability company from another corporation, partnership or limited liability company but only when both corporations are members of the same controlled group are exempt from sales tax.

Purchases of motion picture films, coin-operated video arcade machines and other video arcade games for any use upon which there will be a charge subject to sales tax.

Purchases by a licensed carrier of persons or property, or by a government entity, or aircraft repair, remodeling and maintenance services for an aircraft, engine or other component part of an aircraft, or purchases of tangible personal property that is permanently affixed as a component part of an aircraft as part of the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, and purchases by a licensed carrier of persons or property, or by a government entity, of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts.

## Refundable Exemptions/Direct Pay Permit

The following exemptions must be claimed in one of the following ways. These exemptions may not be claimed by use of the tax exemption certificate.

**Direct Pay Permit** - Business entities that qualify for these exemptions may apply to the State Tax Department for issuance of a Direct Pay Permit. Only those organizations which qualify for one or more of these exemptions will be issued a Direct Pay Permit. Also, business entities which are delinquent in paying taxes to the Department will not be issued Direct Pay Permits. Direct Pay Permits may only be used to purchase exempt items and may not be used to purchase gasoline and special fuel.

**Pay/Refund** - Business entities that qualify for these exemptions but who have not been issued Direct Pay Permits must pay the sales tax to the vendor at the time of purchase and then apply to the Department for a refund or credit of the tax paid on their exempt purchases.

### **Refundable/Direct Pay Permit Exemptions**

**Manufacturing Exemptions** - Purchases of equipment, supplies, materials and services intended for direct use or consumption in the activity of manufacturing are exempt from sales tax. Purchases which are not intended for direct use or consumption but whose use or consumption is only incidental or convenient to the manufacturing activity are not exempt. For example, the purchase of an oven to process coal into coke and the purchase of coal to be processed into coke are exempt, whereas a furnace purchased to heat the office building of a coke manufacturer and the coal used to fire that furnace are subject to sales tax. For a complete discussion of the definition of "direct use" see Publication TSD-358.

**Natural Resource Production** - Purchases for direct use or consumption in the activity of producing natural resources are exempt from sales tax.

**Transportation and Transmission Businesses** - Purchases made for direct use or consumption in the activity of transportation are exempt from sales tax. Transportation and transmission businesses engage in the activity of hauling or delivering goods for others. Persons who haul or deliver their own goods may not claim this exemption. Purchases which are not for direct use or consumption or whose use or consumption will only be incidental or convenient to such transportation or transmission activity are taxable.

**Communication Businesses** - Purchases made for direct use or consumption in the activity of communication (telephone, telegraph, commercial broadcast radio and television, cable television, etc.) are exempt. Purchases which are not for direct use or consumption or whose use or consumption which will only be incidental or convenient to the communications activity are taxable.

**Businesses Subject to the Business and Occupation Tax, Severance Tax or Telecommunications Tax** - Businesses subject to these taxes may purchase exempt from the sales tax all equipment, supplies and materials that will be used in the business activities subject to those taxes. Purchases made for use in activities not subject to those taxes do not qualify for this exemption.

**Other Organizations** - Charitable organizations, volunteer fire departments and nationally chartered fraternal or social organizations may qualify for a refundable/direct pay permit exemption. If these organizations do not qualify for the specific exemption for non-profit (IRC §501(c)(3) or § 501(c)(4)) organizations, they may claim a limited refundable exemption. However, if these organizations qualify for the non-profit exemption, they must claim their exemption by use of the tax exemption certificate and will not be eligible to receive a direct pay permit.

- Purchases by **bona fide charitable** organizations which make no charge whatsoever for the services they render are exempt.
- Purchases by **volunteer fire departments** of station house equipment, construction and automotive equipment are exempt.
- Purchases by nationally chartered **fraternal or social** organizations for the sole purpose of **free distribution in public welfare or relief work** are exempt.

West Virginia State Tax Department  
Compliance and Taxpayer Services Division  
P. O. Box 3784  
Charleston, West Virginia 25337-3784

Telephone: (304) 558-3333  
Toll free : 1-800-WVA-TAXS (1-800-982-8297)

Visit our website:  
<http://www.wytax.gov>

TDD service for the hearing impaired: 1-800-2TAXTDD (1-800-282-9833)



CITY OF  
**FOLLANSBEE**  
WEST VIRGINIA

OFFICE OF THE CITY ATTORNEY  
**MICHAEL E. GAUDIO**  
P.O. Box 516  
Follansbee, WV 26037  
(304) 527-1400

July 1, 2016

Robert S. Kiss, Chairman  
West Virginia Municipal Home Rule Board  
c/o Debbie Browning  
West Virginia Development Office  
West Virginia Department of Commerce  
Capitol Complex, Building 6, Room 525  
Charleston, WV 25305-0311

Re: Application of the City of Follansbee, West Virginia, to Participate  
in Phase III of the Municipal Home Rule Pilot Program

Dear Chairman Kiss:

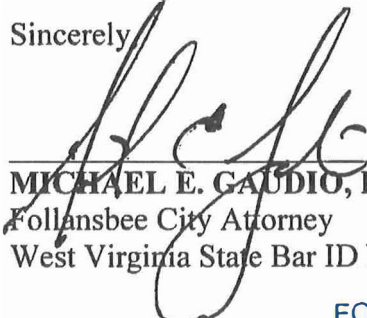
As attorney for the City of Follansbee, West Virginia, I have reviewed W. Va. Code § 8-1-5a (2013), the Application Guidelines for Participation in Phase III of the Municipal Home Rule Pilot Program, and the Application of the City of Follansbee to participate in Phase III of the Pilot Program, including all attachments thereto.

Based upon my examination of these documents and my understanding of the Application, it is my opinion that the Application complies with the provisions and requirements of W. Va. Code § 8-1-5a.

The Application does not include any proposed changes to ordinances, acts, resolutions, rules, or regulations that are contrary to the provisions of W. Va. Code §§ 8-1-5a(i)(1) through (17) or prohibited by W. Va. Code §§ 8-1-5(j) (1) and (2), except that the City's written plan does include a proposal to reduce business and occupation taxes and impose a one percent municipal sales tax that would be collected by the State Tax Commissioner, as allowed under W. Va. Code § 8-1-5a(i)(14).

The Municipal Home Rule Board may rely upon this opinion. If you have any questions or require anything further, please do not hesitate to contact my office.

Sincerely

  
\_\_\_\_\_  
**MICHAEL E. GAUDIO, ESQ.**  
Follansbee City Attorney  
West Virginia State Bar ID No. 1353

FOLLANSBEE NEVER FAILS



CITY OF  
**FOLLANSBEE**  
WEST VIRGINIA

OFFICE OF THE CITY MANAGER  
**JOHN DeSTEFANO, JR.**  
872 Main Street, P.O. Box 606  
Follansbee, WV 26037  
304-527-1330  
follansbeecitymgr@comcast.net

WV Home Rule Board

Re: payments to State of WV

The City of Follansbee does not owe any taxes or other payments to the State of West Virginia.

Respectfully,

  
John A. DeStefano, Jr.  
City Manager

FOLLANSBEE NEVER FAILS