

H. B. 2739

(By Delegate Lane)

[Introduced February 26, 2013; referred to the
Committee on Political Subdivisions then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §8-13-5 of the Code of West Virginia,
1931, as amended, relating to the business and occupation tax;
and altering the basis for municipal business and occupational
taxation from gross income to net income.

Be it enacted by the Legislature of West Virginia:

That §8-13-5 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

**§8-13-5. Business and occupation or privilege tax; limitation on
rates; effective date of tax; exemptions; activity in
two or more municipalities; administrative provisions.**

(a) *Authorization to impose tax.* -- (1) Whenever any business
activity or occupation, for which the state imposed its annual
business and occupation or privilege tax under article thirteen,
chapter eleven of this code, prior to July 1, 1987, is engaged in
or carried on within the corporate limits of any municipality, the
governing body thereof shall have plenary power and authority,

1 unless prohibited by general law, to impose a similar business and
2 occupation tax thereon for the use of the municipality.

3 (2) Municipalities may impose a business and occupation or
4 privilege tax upon every person engaging or continuing within the
5 municipality in the business of aircraft repair, remodeling,
6 maintenance, modification and refurbishing services to any aircraft
7 or to an engine or other component part of any aircraft as a
8 separate business activity.

9 (b) *Maximum tax rates.* -- In no case shall the rate of such
10 municipal business and occupation or privilege tax on a particular
11 activity exceed the maximum rate imposed by the state, exclusive of
12 surtaxes, upon any business activities or privileges taxed under
13 sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-I and
14 two-j, article thirteen of said chapter eleven, as such rates were
15 in effect under said article thirteen, on January 1, 1959, or in
16 excess of one percent of ~~gross~~ net income under section two-k of
17 said article thirteen, or in excess of three tenths of one percent
18 of ~~gross~~ net value or ~~gross~~ net proceeds of sale under section two-
19 m of said article thirteen. The rate of municipal business and
20 occupation or privilege tax on the activity described in
21 subdivision (2), subsection (a) of this section shall be ten one-
22 hundredths of one percent. The rate of municipal business and
23 occupation or privilege tax on the activity of a health maintenance
24 organization holding a certificate of authority under the
25 provisions of article twenty-five-a, chapter thirty-three of this
26 code, shall not exceed one half of one percent to be applied solely

1 to that portion of ~~gross~~ net income received from the Medicaid
2 program pursuant to Title XIX of the Social Security Act, the state
3 employee programs administered by the Public Employees Insurance
4 Agency pursuant to article sixteen, chapter five of this code, and
5 other federal programs, for health care items or services provided
6 directly or indirectly by the health maintenance organization, that
7 is expended for administrative expenses; and shall not exceed one
8 half of one percent to be applied to the ~~gross~~ net income received
9 from enrollees, or from employers on behalf of enrollees, from
10 sources other than Medicaid, state employee programs administered
11 by the Public Employees Insurance Agency and other federal programs
12 for health care items or services provided directly or indirectly
13 by the health maintenance organization: *Provided*, That this tax
14 rate limitation shall not extend to that part of the gross income
15 of health maintenance organizations which is received from the use
16 of real property other than property in which any such company
17 maintains its office or offices in this state, whether such income
18 is in the form of rentals or royalties. This provision concerning
19 the maximum municipal business and occupation tax rate on the
20 activities of health maintenance organizations is effective
21 beginning after December 31, 1996. Any payments of business and
22 occupation tax made by a health maintenance organization to a
23 municipality for calendar year 1997 shall not be subject to
24 recovery by the health maintenance organization. Administrative
25 expenses shall include all expenditures made by a health
26 maintenance organization other than expenses paid for claims

1 incurred or payments made to providers for the benefits received by
2 enrollees.

3 (c) *Effective date of local tax.* -- Any taxes levied pursuant
4 to the authority of this section may be made operative as of the
5 first day of the then current fiscal year or any date thereafter:
6 *Provided,* That any new imposition of tax or any increase in the
7 rate of tax upon any business, occupation or privilege taxed under
8 section two-e of said article thirteen shall apply only to gross
9 income derived from contracts entered into after the effective date
10 of such imposition of tax or rate increase, and which effective
11 date shall not be retroactive in any respect: *Provided, however,*
12 That no tax imposed or revised under this section upon public
13 utility services may be effective unless and until the municipality
14 provides written notice of the same by certified mail to said
15 public utility at least sixty days prior to the effective date of
16 said tax or revision thereof.

17 (d) *Exemptions.* -- A municipality shall not impose its
18 business and occupation or privilege tax on any activity that was
19 exempt from the state's business and occupation tax under the
20 provisions of section three, article thirteen of said chapter
21 eleven, prior to July 1, 1987, and determined without regard to any
22 annual or monthly monetary exemption also specified therein:
23 *Provided,* That on and after July 1, 2007, a municipality may impose
24 its business and occupation or privilege tax on any activity of a
25 corporation, association or society organized and operated
26 exclusively for religious or charitable purposes that was exempt

1 from the state's business and occupation tax under the provisions
2 of section three, article thirteen of chapter eleven, prior to July
3 1, 1987, but only to the extent that the income generated by the
4 activity is subject to taxation under the provisions of section 511
5 of the Internal Revenue Code of 1986, as amended.

6 (e) *Activity in two or more municipalities.* -- Whenever the
7 business activity or occupation of the taxpayer is engaged in or
8 carried on in two or more municipalities of this state, the amount
9 of ~~gross~~ net income, or ~~gross~~ net proceeds of sales, taxable by
10 each municipality shall be determined in accordance with such
11 legislative regulations as the Tax Commissioner may prescribe. It
12 being the intent of the Legislature that multiple taxation of the
13 same ~~gross~~ net income, or ~~gross~~ net proceeds of sale, under the
14 same classification by two or more municipalities shall not be
15 allowed, and that ~~gross~~ net income, or ~~gross~~ net proceeds of sales,
16 derived from activity engaged in or carried on within this state,
17 that is presently subject to state tax under section two-c or two-
18 h, article thirteen, chapter eleven of this code, which is not
19 taxed or taxable by any other municipality of this state, may be
20 included in the measure of tax for any municipality in this state,
21 from which the activity was directed, or in the absence thereof,
22 the municipality in this state in which the principal office of the
23 taxpayer is located. Nothing in this subsection shall be construed
24 as permitting any municipality to tax ~~gross~~ net income or ~~gross~~ net
25 proceeds of sales in violation of the Constitution and laws of this
26 state or the United States, or as permitting a municipality to tax

1 any activity that has a definite situs outside its taxing
2 jurisdiction.

3 (f) Where the governing body of a municipality imposes a tax
4 authorized by this section, such governing body shall have the
5 authority to offer tax credits from such tax as incentives for new
6 and expanding businesses located within the corporate limits of the
7 municipality.

8 (g) *Administrative provisions.* -- The ordinance of a
9 municipality imposing a business and occupation or privilege tax
10 shall provide procedures for the assessment and collection of such
11 tax, which shall be similar to those procedures in article
12 thirteen, chapter eleven of this code, as in existence on June 30,
13 1978, or to those procedures in article ten, chapter eleven of this
14 code, and shall conform with such provisions as they relate to
15 waiver of penalties and additions to tax.

NOTE: The purpose of this bill is to alter the basis for
municipal business and occupational taxation from gross income to
net income.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.