

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2716

BY DELEGATES WARD, HOWELL, MCGEEHAN, MILEY,

WILSON, PAYNTER, FRICH AND BUTLER

[Introduced February 27, 2017; referred
to the Committee on Political Subdivisions then
Finance.]

1 A BILL to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating
 2 to imposing an indefinite moratorium on new business and occupancy or privilege taxes
 3 in West Virginia municipalities; prohibiting municipalities that annex new territory from
 4 imposing preexisting business and occupancy or privilege taxes on businesses within the
 5 annexed territory; prohibiting municipalities from raising preexisting business and
 6 occupancy or privilege taxes; and permitting municipalities to lower preexisting business
 7 and occupancy or privilege taxes.

Be it enacted by the Legislature of West Virginia:

1 That §8-13-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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.

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

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

11 (b) *Maximum tax rates.* -- In no case shall the rate of such municipal business and
 12 occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state,
 13 exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-

14 b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as
15 such rates were in effect under said article thirteen, on January 1, 1959, or in excess of one
16 percent of gross income under section two-k of said article thirteen, or in excess of three tenths
17 of one percent of gross value or gross proceeds of sale under section two-m of said article
18 thirteen. The rate of municipal business and occupation or privilege tax on the activity described
19 in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The
20 rate of municipal business and occupation or privilege tax on the activity of a health maintenance
21 organization holding a certificate of authority under the provisions of article twenty-five-a, chapter
22 thirty-three of this code, shall not exceed one half of one percent to be applied solely to that portion
23 of gross income received from the Medicaid program pursuant to Title XIX of the Social Security
24 Act, the state employee programs administered by the Public Employees Insurance Agency
25 pursuant to article sixteen, chapter five of this code, and other federal programs, for health care
26 items or services provided directly or indirectly by the health maintenance organization, that is
27 expended for administrative expenses; and shall not exceed one half of one percent to be applied
28 to the gross income received from enrollees, or from employers on behalf of enrollees, from
29 sources other than Medicaid, state employee programs administered by the Public Employees
30 Insurance Agency and other federal programs for health care items or services provided directly
31 or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall
32 not extend to that part of the gross income of health maintenance organizations which is received
33 from the use of real property other than property in which any such company maintains its office
34 or offices in this state, whether such income is in the form of rentals or royalties. This provision
35 concerning the maximum municipal business and occupation tax rate on the activities of health
36 maintenance organizations is effective beginning after December 31, 1996. Any payments of
37 business and occupation tax made by a health maintenance organization to a municipality for
38 calendar year 1997 shall not be subject to recovery by the health maintenance organization.
39 Administrative expenses shall include all expenditures made by a health maintenance

40 organization other than expenses paid for claims incurred or payments made to providers for the
41 benefits received by enrollees.

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

51 (d) *Exemptions.* -- A municipality shall not impose its business and occupation or privilege
52 tax on any activity that was exempt from the state's business and occupation tax under the
53 provisions of section three, article thirteen of said chapter eleven, prior to July 1, 1987, and
54 determined without regard to any annual or monthly monetary exemption also specified therein:
55 *Provided,* That on and after July 1, 2007, a municipality may impose its business and occupation
56 or privilege tax on any activity of a corporation, association or society organized and operated
57 exclusively for religious or charitable purposes that was exempt from the state's business and
58 occupation tax under the provisions of section three, article thirteen of chapter eleven, prior to
59 July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation
60 under the provisions of section 511 of the Internal Revenue Code of 1986, as amended.

61 (e) *Activity in two or more municipalities.* -- Whenever the business activity or occupation
62 of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount
63 of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in
64 accordance with such legislative regulations as the Tax Commissioner may prescribe. It being the
65 intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of

66 sale, under the same classification by two or more municipalities shall not be allowed, and that
67 gross income, or gross proceeds of sales, derived from activity engaged in or carried on within
68 this state, that is presently subject to state tax under section two-c or two-h, article thirteen,
69 chapter eleven of this code, which is not taxed or taxable by any other municipality of this state,
70 may be included in the measure of tax for any municipality in this state, from which the activity
71 was directed, or in the absence thereof, the municipality in this state in which the principal office
72 of the taxpayer is located. Nothing in this subsection shall be construed as permitting any
73 municipality to tax gross income or gross proceeds of sales in violation of the Constitution and
74 laws of this state or the United States, or as permitting a municipality to tax any activity that has
75 a definite situs outside its taxing jurisdiction.

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

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

84 (h) Moratorium. -- There shall be an indefinite moratorium on the imposition of new
85 business and occupancy or privilege taxes authorized under subsection (a) of this section
86 beginning July 1, 2017. The moratorium shall prohibit municipalities from:

87 (1) Authorizing any new business and occupancy or privilege taxes;

88 (2) Imposing business and occupancy or privilege taxes on businesses located within
89 territory annexed by the municipality after July 1, 2017; or

90 (3) Raising the rates of preexisting business and occupancy or privilege taxes.

91 The moratorium shall not prevent municipalities from lowering preexisting business and

92 occupancy or privilege taxes.

NOTE: The purpose of this bill is to impose an indefinite moratorium on new business and occupancy or privilege taxes in West Virginia municipalities; prohibiting municipalities that annex new territory from imposing preexisting business and occupancy or privilege taxes on businesses within the annexed territory; prohibiting municipalities from raising preexisting business and occupancy or privilege taxes; and permitting municipalities to lower preexisting business and occupancy or privilege taxes.

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