

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4636

BY DELEGATES PACK, GRAVES, HOUSEHOLDER, CRISS,

STEELE, FOSTER, KIMES, WESTFALL, QUEEN AND FAST

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §8-13-5 and §8-13-13 of the Code of West Virginia, 1931, as
2 amended, all relating to providing that municipal business and occupation taxes, as well
3 as municipal rates, fees, and charges that are owed to a municipality that are postmarked
4 after the due date are late and subject to late fees or penalties; clarifying that municipal
5 business and occupation taxes, as well as municipal rates, fees, and charges that are
6 owed to a municipality are considered to be remitted on time when the date on which the
7 payment is postmarked is on or before the due date; and clarifying that municipalities may
8 not impose a late fee or penalty for those municipal taxes or municipal rates, fees, and
9 charges owed to them if the payment is postmarked on or before the due date.

Be it enacted by the Legislature of West Virginia:

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 §11-13-1 *et*
3 *seq.* of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of
4 any municipality, the governing body thereof shall have plenary power and authority, unless
5 prohibited by general law, to impose a similar business and occupation tax thereon for the use of
6 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 the 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 §11-13-2a, 11-13-

14 2b, 11-13-2c, 11-13-2d, 11-13-2e, 11-13-2g, 11-13-2h, 11-13-2i, and 11-13-2j of this code, as
15 those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess
16 of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one
17 percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of
18 municipal business and occupation or privilege tax on the activity described in subdivision (2),
19 subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal
20 business and occupation or privilege tax on the activity of a health maintenance organization
21 holding a certificate of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not
22 exceed one-half of one percent to be applied solely to that portion of gross income received from
23 the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee
24 programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.*
25 of this code, and other federal programs, for health care items or services provided directly or
26 indirectly by the health maintenance organization, that is expended for administrative expenses;
27 and shall not exceed one half of one percent to be applied to the gross income received from
28 enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state
29 employee programs administered by the Public Employees Insurance Agency, and other federal
30 programs for health care items or services provided directly or indirectly by the health
31 maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of
32 the gross income of health maintenance organizations which is received from the use of real
33 property other than property in which any company maintains its office or offices in this state,
34 whether the income is in the form of rentals or royalties. This provision concerning the maximum
35 municipal business and occupation tax rate on the activities of health maintenance organizations
36 is effective beginning after December 31, 1996. Any payments of business and occupation tax
37 made by a health maintenance organization to a municipality for calendar year 1997 is not subject
38 to recovery by the health maintenance organization. Administrative expenses shall include all

39 expenditures made by a health maintenance organization other than expenses paid for claims
40 incurred or payments made to providers for the benefits received by enrollees.

41 (c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section
42 may be made operative as of the first day of the then current fiscal year or any date thereafter:
43 *Provided,* That any new imposition of tax or any increase in the rate of tax upon any business,
44 occupation or privilege taxed under §11-2E-1 *et seq.* of this code, applies only to gross income
45 derived from contracts entered into after the effective date of the imposition of tax or rate increase,
46 and which effective date shall not be retroactive in any respect: *Provided, however,* That no tax
47 imposed or revised under this section upon public utility services may be effective unless and until
48 the municipality provides written notice of the same by certified mail to said public utility at least
49 60 days prior to the effective date of said tax or revision thereof.

50 (d) *Exemptions.* — A municipality shall not impose its business and occupation or privilege
51 tax on any activity that was exempt from the state's business and occupation tax under the
52 provisions of §11-13-3 of this code, prior to July 1, 1987, and determined without regard to any
53 annual or monthly monetary exemption also specified therein: *Provided,* That on and after July 1,
54 2007, a municipality may impose its business and occupation or privilege tax on any activity of a
55 corporation, association, or society organized and operated exclusively for religious or charitable
56 purposes that was exempt from the state's business and occupation tax under the provisions of
57 §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by
58 the activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of
59 1986, as amended.

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

65 same classification by two or more municipalities shall not be allowed, and that gross income, or
66 gross proceeds of sales, derived from activity engaged in or carried on within this state, that is
67 presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or
68 taxable by any other municipality of this state, may be included in the measure of tax for any
69 municipality in this state, from which the activity was directed, or in the absence thereof, the
70 municipality in this state in which the principal office of the taxpayer is located. Nothing in this
71 subsection shall be construed as permitting any municipality to tax gross income or gross
72 proceeds of sales in violation of the Constitution and laws of this state or the United States, or as
73 permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

74 (f) Where the governing body of a municipality imposes a tax authorized by this section,
75 the governing body may offer tax credits from the tax as incentives for new and expanding
76 businesses located within the corporate limits of the municipality.

77 (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and
78 occupation or privilege tax shall provide procedures for the assessment and collection of the tax,
79 which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on
80 June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with
81 such provisions as they relate to waiver of penalties and additions to tax.

82 (h) *Timely payment.* — Payments for taxes due under this section that are postmarked
83 after the due date by which they are owed shall be considered late and may be subject to late
84 fees or penalties: *Provided*, That payments that are received by the municipality after the due
85 date, but that were postmarked on or before the due date shall be considered to be on time and
86 shall not be assessed any late fees or penalties.

§8-13-13. Special charges for municipal services.

1 (a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes
2 any essential or special municipal service, including, but not limited to, police and fire protection,
3 parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning,

4 street lighting, street maintenance and improvement, sewerage and sewage disposal, and the
5 collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter, has
6 plenary power and authority to provide by ordinance for the installation, continuance,
7 maintenance, or improvement of the service, to make reasonable regulations of the service, and
8 to impose by ordinance upon the users of the service reasonable rates, fees, and charges to be
9 collected in the manner specified in the ordinance.

10 (b) Any sewerage and sewage disposal service and any service incident to the collection
11 and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter is subject to
12 the provisions of chapter 24 of this code.

13 (c) A municipality shall not have a lien on any property as security for payments due under
14 subsection (a) of this section except as provided in subsection (d) of this section.

15 (d) A municipality may enact an ordinance, pursuant to this section, permitting it to file a
16 lien on real property located within the municipal corporate limits for unpaid and delinquent fire,
17 police, or street fees. The ordinance must provide an administrative procedure for the
18 municipality's assessment and collection of the fees. The administrative procedure must require
19 that, before any lien is filed, the municipality will give notice to the property owner, by certified
20 mail, return receipt requested, that the municipality will file the lien unless the delinquency is paid
21 by a date stated in the notice, which must be no less than 90 days from the date the notice is
22 mailed. The administrative procedure must include the right to appeal to the circuit court of the
23 county in which the real property is located. The circuit court shall consider the appeal under its
24 general authority, including but not limited to §51-2-2(f) of this code.

25 (e) Notwithstanding the provisions of §8-11-4 of this code, any ordinance enacted or
26 substantially amended under the provisions of this section shall be published as a Class II legal
27 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication
28 area for the publication is the municipality.

29 (f) In the event 30 percent of the qualified voters of the municipality, by petition duly signed
30 by them in their own handwriting and filed with the recorder of the municipality within 45 days after
31 the expiration of the publication, protest against the ordinance as enacted or amended, the
32 ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the
33 qualified voters of the municipality at a regular municipal election or special municipal election, as
34 the governing body directs. Voting shall not take place until after notice of the submission is given
35 by publication as provided in subsection (e) of this section.

36 (g) The powers and authority granted to municipalities and to the governing bodies of
37 municipalities in this section are in addition and supplemental to the powers and authority named
38 in any charters of the municipalities.

39 (h) Notwithstanding any other provisions of this section, if rates, fees, and charges
40 provided in this section are imposed by the governing body of a municipality for the purpose of
41 replacing, and in amounts approximately sufficient to replace in its general fund amounts
42 appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to
43 an election duly called and held under the Constitution and laws of the state to authorize the
44 issuance and sale of the municipality's general obligation bonds for public improvement purposes,
45 the call for the election shall state that the governing body of the municipality proposes to impose
46 rates, fees, and charges in specified amounts under this section for the use of one or more of the
47 services specified in subsection (a) of this section, which shall be related to the public
48 improvement proposed to be made with the proceeds of the bonds, no notice, publication of
49 notice, or referendum, or election or other condition or prerequisite to the imposition of the rates,
50 fees, and charges shall be required or necessary other than the legal requirements for issuance
51 and sale of the general obligation bonds.

52 (i) Payments for rates, fees, and charges due under this section that are postmarked after
53 the due date by which they are owed shall be considered late and may be subject to late fees or
54 penalties: *Provided*, That payments that are received by the municipality after the due date, but

55 that were postmarked on or before the due date shall be considered to be on time and shall not
56 be assessed any late fees or penalties.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor