

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute For

House Bill 4636

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[Introduced February 11, 2022; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §11-13-1 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §11-13-32, all relating to
3 clarifying that business and occupation taxes, as well as city service fees, that are owed
4 to a city or municipality are considered to be remitted “on time” when the date that they
5 are postmarked is on or before the deadline date, rather than on the date that such taxes
6 are physically received by a city or municipality; and clarifying that cities and municipalities
7 may not impose a late fee or penalty for those taxes owed to them so long as they are
8 postmarked on or before the deadline date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

1 (a) *General.* — When used in this article, or in the administration of this article, the terms
2 defined in subsection (b) shall have the meanings ascribed to them by this section, unless a
3 different meaning is clearly required by either the context in which the term is used or by specific
4 definition.

5 (b) *Terms defined.* —

6 (1) “Person”, or the term “company”, used in this article interchangeably, includes any
7 individual, firm, copartnership, joint adventure, association, corporation, trust or any other group
8 or combination acting as a unit, and the plural as well as the singular number, unless the intention
9 to give a more limited meaning is disclosed by the context.

10 (2) “Sale”, “sales” or “selling” includes any transfer of or title to property or electricity,
11 whether for money or in exchange for other property.

12 (3) “Taxpayer” means any person liable for any tax hereunder.

13 (4) “Gross income” means the gross receipts of the taxpayer, received as compensation
14 for personal services and the gross receipts of the taxpayer derived from trade, business,
15 commerce or sales and the value proceeding or accruing from the sale of tangible property (real

16 or personal) or service, or both, and all receipts by reason of the investment of the capital of the
17 business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other
18 emoluments however designated and including all interest, carrying charges, fees or other like
19 income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in
20 the regular course and conduct of his or her business, and extension of credit in connection with
21 the sale of any tangible personal property or service and without any deductions on account of
22 the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or
23 in kind or otherwise, interest or discount paid or any other expenses whatsoever.

24 (5) "Gross proceeds of sales" means the value, whether in money or other property,
25 actually proceeding from the sale of tangible property without any deduction on account of the
26 cost of property sold or expenses of any kind.

27 (6) "Business" shall include all activities engaged in or caused to be engaged in with the
28 object of gain or economic benefit, either direct or indirect. "Business" shall include the rendering
29 of gas storage service by any person for the gain or economic benefit of any person, including,
30 but not limited to, the storage operator, whether or not incident to any other business activity.

31 (7) "Gas" means either natural gas unmixed or any mixture of natural and artificial gas or
32 any other gas.

33 (8) "Storage reservoir" means that portion of any subterranean sand or rock stratum or
34 strata into which gas has been injected for the purpose of storage prior to March 1, 1989.

35 (9) "Gas storage service" means the injection of gas into a storage reservoir, the storage
36 of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage
37 reservoir. The gas may be owned by the storage operator or any other person.

38 (10) "Net number of dekatherms of gas injected" means the sum of the daily injection of
39 dekatherms of gas in excess of the sum of the daily withdrawals of dekatherms of gas during a
40 tax month.

41 (11) "Net number of dekatherms of gas withdrawn" means the sum of the daily withdrawal
42 of dekatherms of gas in excess of the sum of the daily injection of dekatherms of gas during a tax
43 month.

44 (12) "Gas storage operator" means any person who operates a storage reservoir or
45 provides a storage service as defined in this subsection either as owner or lessee.

46 (13) "Month" or "tax month" means the calendar month.

47 (14) "Dekatherm" means the thermal energy unit equal to one million British thermal units
48 (BTU's) or the equivalent of one thousand cubic feet of gas having a heating content of one
49 thousand BTU's per cubic foot.

50 (15) "Taxable year" means the calendar year, or the fiscal year ending during the calendar
51 year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in
52 case of a return made for a fractional part of a year under the provisions of this article, or under
53 regulations promulgated by the Tax Commissioner, the period for which the return is made.

54 (16) "Homeowners' association" means a homeowners' association as defined in Section
55 528 of the Internal Revenue Code of 1986, as amended. The term "homeowners' association"
56 also includes any unit owners' association organized under §36B-3-101 of this code.

57 (17) "Member", for purposes of the exemption provided in subdivision (7), subsection (b),
58 section three of this article, means a person having membership rights in a homeowners'
59 association, in accordance with the provisions of its articles of incorporation, bylaws or other
60 instruments creating its form and organization; and having bona fide rights and privileges in the
61 organization ordinarily conferred on members of the homeowners association, such as the right
62 to vote, the right to elect officers and directors and the right to hold office within the organization.
63 The term "member" also includes a "unit owner" as that term is defined in §36B-1-103 of this code.

64 (18) "On time" for purposes of a city or municipality's collection of business and occupation
65 taxes or "rates, fees and charges" in accordance with §8-13-13 of this code is considered to be

66 the date that such taxes owed are postmarked on or before the deadline that they are due to the
67 city or municipality.

**§11-13-32. Postmarked business and occupation taxes and city service fees owed to cities
and municipalities considered “on time” when sent on or before deadline date.**

1 For purposes of this article, business and occupation taxes collected by a city or
2 municipality, as well as “rates, fees and charges” in accordance with §8-13-13 of this code
3 collected by a city or municipality, are considered remitted “on time” when the date they are
4 postmarked is on or before the deadline that those taxes are due to the city or municipality. Taxes
5 and “rates, fees and charges” in accordance with §8-13-13 of this code that are postmarked after
6 the deadline date are considered late and are subject to late fees or penalties. “On time” shall
7 have the definition assigned in §11-13-1 of this code. Even if such taxes “rates, fees and charges”
8 in accordance with §8-13-13 of this code owed arrive later to the city or municipality beyond the
9 deadline, so long as such taxes are postmarked on or before the deadline due, these are
10 considered to be “on time” and shall not be assessed any late fees or penalties.

NOTE: The purpose of this bill is to modify the definition of business and occupation taxes to clarify that taxes owed are considered remitted “on time” so long as they are postmarked on or before their due date. Cities and municipalities may not assess a late fee or penalty if taxes owed arrive to them later than the due date, so long as they are postmarked on or before the date of the deadline.

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