

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 3075

FISCAL  
NOTE

By Delegates DeVault, Martin, Foster and Mallow

[Introduced January 26, 2023; 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 to  
2 clarifying that subcontractors are exempt from municipal business and occupation taxes.

*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 any  
4 municipality, the governing body thereof shall have plenary power and authority, unless prohibited  
5 by general law, to impose a similar business and occupation tax thereon for the use of the  
6 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, remodeling,  
9 maintenance, modification, and refurbishing services to any aircraft, or to an engine or other  
10 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, 11-13-2b,  
14 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 those  
15 rates were in effect under §11-13-1 et seq. of this code, on January 1, 1959, or in excess of one  
16 percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one percent  
17 of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of municipal  
18 business and occupation or privilege tax on the activity described in subdivision (2), subsection (a)  
19 of this section shall be ten one-hundredths of one percent. The rate of municipal business and  
20 occupation or privilege tax on the activity of a health maintenance organization holding a certificate

21 of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not exceed one-half of one  
22 percent to be applied solely to that portion of gross income received from the Medicaid program  
23 pursuant to Title XIX of the Social Security Act, the state employee programs administered by the  
24 Public Employees Insurance Agency pursuant to §5-16-1 *et seq.* of this code, and other federal  
25 programs, for health care items or services provided directly or indirectly by the health  
26 maintenance organization, that is expended for administrative expenses; and shall not exceed  
27 one half of one percent to be applied to the gross income received from enrollees, or from  
28 employers on behalf of enrollees, from sources other than Medicaid, state employee programs  
29 administered by the Public Employees Insurance Agency, and other federal programs for health  
30 care items or services provided directly or indirectly by the health maintenance organization:  
31 *Provided*, That this tax rate limitation shall not extend to that part of the gross income of health  
32 maintenance organizations which is received from the use of real property other than property in  
33 which any company maintains its office or offices in this state, whether the income is in the form of  
34 rentals or royalties. This provision concerning the maximum municipal business and occupation  
35 tax rate on the activities of health maintenance organizations is effective beginning after  
36 December 31, 1996. Any payments of business and occupation tax made by a health  
37 maintenance organization to a municipality for calendar year 1997 is not subject to recovery by the  
38 health maintenance organization. Administrative expenses shall include all expenditures made by  
39 a health maintenance organization other than expenses paid for claims incurred or payments  
40 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 60  
49 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 the  
58 activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of 1986, as  
59 amended: *Provided, however, That subcontractors shall be exempt from a business and*  
60 *occupation or privilege tax hereunder.*

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 of  
63 gross income, or gross proceeds of sales, taxable by each municipality shall be determined in  
64 accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the  
65 Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the  
66 same classification by two or more municipalities shall not be allowed, and that gross income, or  
67 gross proceeds of sales, derived from activity engaged in or carried on within this state, that is  
68 presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or  
69 taxable by any other municipality of this state, may be included in the measure of tax for any  
70 municipality in this state, from which the activity was directed, or in the absence thereof, the  
71 municipality in this state in which the principal office of the taxpayer is located. Nothing in this  
72 subsection shall be construed as permitting any municipality to tax gross income or gross

73 proceeds of sales in violation of the Constitution and laws of this state or the United States, or as  
74 permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

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

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

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

NOTE: The purpose of this bill is to clarify that subcontractors are exempt from municipal  
business and occupation 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.