

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3538

By Delegate Howell

[Introduced February 14, 2023; Referred to the
Committee on Finance]

1 A BILL to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating to
2 limitations on the computation, imposition and collection of the business and occupation
3 tax by municipalities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

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 --*

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

60 (2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the
61 sale of new automobiles that have never been registered in the name of an individual shall be
62 reduced by 50 percent of the total amount of the tax: *Provided,* That, effective July 1, 2024, the
63 remaining municipal business and occupation or privilege tax on the sale of new automobiles that
64 have never been registered in the name of an individual shall be reduced by an additional 50
65 percent of the total amount of the tax: *Provided, however,* That effective July 1, 2025, the
66 municipal business and occupation or privilege tax on the sale of new automobiles that have never
67 been registered in the name of an individual shall be completely eliminated. For the purposes of
68 this section an automobile is a self-propelled vehicle used primarily for the transportation of
69 passengers and their effects and operated on the roads and highways by the use of motor vehicle

70 fuel or propelled by one or more electric motors using energy stored in batteries or a combination
71 thereof. An automobile shall include a light-duty truck with an enclosed cabin and an open loading
72 area at the rear and a sport utility vehicle. An automobile does not include a motorcycle.

73 (e) *Activity in two or more municipalities.* — Whenever the business activity or occupation
74 of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of
75 gross income, or gross proceeds of sales, taxable by each municipality shall be determined in
76 accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the
77 Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the
78 same classification by two or more municipalities shall not be allowed, and that gross income, or
79 gross proceeds of sales, derived from activity engaged in or carried on within this state, that is
80 presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or
81 taxable by any other municipality of this state, may be included in the measure of tax for any
82 municipality in this state, from which the activity was directed, or in the absence thereof, the
83 municipality in this state in which the principal office of the taxpayer is located. Nothing in this
84 subsection shall be construed as permitting any municipality to tax gross income or gross
85 proceeds of sales in violation of the Constitution and laws of this state or the United States, or as
86 permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

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

90 (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and
91 occupation or privilege tax shall provide procedures for the assessment and collection of the tax,
92 which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June
93 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such
94 provisions as they relate to waiver of penalties and additions to tax.

95 (h) *Timely payment.* — Payments for taxes due under this section that are postmarked

96 after the due date by which they are owed shall be considered late and may be subject to late fees
97 or penalties: *Provided*, That payments that are received by the municipality after the due date, but
98 that were postmarked on or before the due date shall be considered to be on time and shall not be
99 assessed any late fees or penalties.

NOTE: The purpose of this bill is to place certain limitations on the computation, imposition and collection of the business and occupation tax.

West Virginia Code §18-2-25 was amended by two bills passed during the 2020 Regular Session of the Legislature, by the House. House Bill 4636 (passed last on March 12, 2022); House Bill 4567 (passed first on March 11, 2022). The two versions of this section have been merged into this bill.

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