WEST virginia legislature

2021 regular session

Introduced

Senate Bill 324

By Senators Jeffries, Lindsay, and Swope

[Introduced February 17, 2021; referred  
to the Committee on Finance]

A BILL to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating to clarifying municipal business and occupation taxation where business activity occurs in more than one location; defining terms to reflect the changing national economy; and authorizing the Tax Commissioner to promulgate any necessary regulations.

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.

(a) *Authorization to impose tax. —* (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under §11-13-1 *et seq.* of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

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

(b) *Maximum tax rates. —* In no case ~~shall~~ may the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, §11-13-2b, §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 such rates were in effect under ~~said~~ §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess of one percent of gross income under §11-13-2k said code, or in excess of three tenths of one percent of gross value or gross proceeds of sale under §11-13-2m of said code. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be 10 100ths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under ~~the provisions of~~ §33-25A-1 *et seq.* of this code ~~shall~~ may not exceed one half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.* of this code, and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public Employees Insurance Agency, and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: *Provided,* That this tax rate limitation ~~shall~~ may extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in this state, whether such income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after December 31, 1996. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year 1997 shall not be subject to recovery by the health maintenance organization. Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) *Effective date of local tax. —* Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided,* That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under §11-13-2e of this code shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: *Provided, however,* That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least 60 days prior to the effective date of said tax or revision thereof.

(d) *Exemptions. —* A municipality ~~shall~~ may impose its business and occupation or privilege tax on any activity that was exempt from the state’s business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption also specified therein: *Provided,* That on and after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity of a corporation, association, or society organized and operated exclusively for religious or charitable purposes that was exempt from the state’s business and occupation tax under ~~the provisions of~~ §11-13-3 of this code prior to July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under the provisions of section 511 of the Internal Revenue Code of 1986, as amended.

(e) *Activity in two or more municipalities. —*

(1)Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the Tax Commissioner may prescribe.

(2) Whenever the business activity or occupation of the taxpayer is engaged in or carried on in this state and in another state or states, the amount of gross income, or gross proceeds of sales, taxable by a municipality in this state shall be determined by the location of the client or customer of the taxpayer for which the benefit is received, in accordance with such legislative regulations as the Tax Commissioner may prescribe.

(3) It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. For the purpose of this section, “from which the activity was directed” shall encompass the location of the client or customer of the taxpayer for which the benefit is received.

(4) Nothing in this subsection ~~shall~~ may be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

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

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

NOTE: The purpose of this bill is to clarify that West Virginia follows a market-based approach to municipal business and occupation taxation, in line with rulings of the Supreme Court of the United States recognizing that the national economy has changed dramatically with the growth of the internet.

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