

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4567

BY DELEGATES STEELE, FOSTER, HOUSEHOLDER, CRISS,
KIMES, HANSHAW (MR. SPEAKER), KESSINGER, HARDY,
BARRETT, HOTT, AND ELLINGTON

[Introduced February 07, 2022; Referred to the
Committee on the Finance]

1 A BILL to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating
2 to business and occupation or privilege tax; prohibiting a municipality from imposing its
3 business and occupation or privilege tax on any business activity or occupation when the
4 basis of the tax is derived from products being shipped into or sold in the municipality,
5 requiring that imposition of the municipal business and occupation or privilege tax on the
6 business of selling automobiles is limited to used automobiles only, and stating that any
7 sales proceeds from the sale of new automobiles that have never been registered in the
8 name of an individual are exempt from the municipal business and occupation or privilege
9 tax.

Be it enacted by the Legislature of West Virginia:

**§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 such 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 §11-13-2d and §11-
14 13-2e of this code ~~sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article~~

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

41 payments made to providers for the benefits received by enrollees.

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

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

61 (2) Effective July 1, 2022, a municipality shall not impose its business and occupation or
62 privilege tax on any business activity or occupation when the basis of the tax is derived from
63 products being shipped into or sold in the municipality.

64 (3) Effective July 1, 2022, imposition of the municipal business and occupation or privilege
65 tax on the business of selling automobiles is limited to used automobiles only; any sales proceeds
66 from the sale of new automobiles that have never been registered in the name of an individual

67 are exempt from the municipal business and occupation or privilege tax.

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

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

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

NOTE: The purpose of this bill is to prohibit a municipality from imposing its business and occupation or privilege tax on any business activity or occupation when the basis of the tax is derived from products being shipped into or sold in the municipality, require that imposition of the municipal business and occupation or privilege tax on the business of selling automobiles is limited to used automobiles only, and state that any sales proceeds from the sale of new automobiles that have never been registered in the name of an individual are exempt from the municipal business and occupation or privilege tax.

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