

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 658

FISCAL
NOTE

By Senators Jeffries and Swope

[Introduced February 16, 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 clarifying municipal business and occupation taxation where business activity occurs in
 3 more than one location; defining terms to reflect the changing national economy; and
 4 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.

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 may 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-
 14 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,
 15 as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess
 16 of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one
 17 percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of
 18 municipal business and occupation or privilege tax on the activity described in subdivision (2),

19 subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal
20 business and occupation or privilege tax on the activity of a health maintenance organization
21 holding a certificate of authority under ~~the provisions of §33-25A-1 et seq.~~ of this code, not exceed
22 one-half of one percent to be applied solely to that portion of gross income received from the
23 Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs
24 administered by the Public Employees Insurance Agency pursuant to §5-16-1 et seq. of this code,
25 and other federal programs, for health care items or services provided directly or indirectly by the
26 health maintenance organization, that is expended for administrative expenses; and shall not
27 exceed 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 may 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~~ may not impose its business and occupation or
51 privilege tax on any activity that was exempt from the state's business and occupation tax under
52 the 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.

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

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

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

70 (3) It is the intent of the Legislature that multiple taxation of the same gross income, or

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

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

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

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

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

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.