

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 2036**

By Delegate Burkhammer

[Introduced February 12, 2025; 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 prohibiting municipalities from collecting business and occupation taxes on projects that  
3 are funded by state or federal government programs.

*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, except those funded by state or  
11 federal government programs.

12        (b) *Maximum tax rates.* — In no case shall the rate of the municipal business and  
13 occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state,  
14 exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, §11-13-  
15 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,  
16 as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess  
17 of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one  
18 percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of  
19 municipal business and occupation or privilege tax on the activity described in subdivision (2),

subsection (a) of this section shall be ten one-hundredths 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 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 not 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 company maintains its office or offices in this state, whether the 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 is not 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, applies only to gross income derived

46 from contracts entered into after the effective date of the imposition of tax or rate increase, and  
47 which effective date shall not be retroactive in any respect: *Provided, however,* That no tax  
48 imposed or revised under this section upon public utility services may be effective unless and until  
49 the municipality provides written notice of the same by certified mail to said public utility at least 60  
50 days prior to the effective date of said tax or revision thereof.

51 (d) *Exemptions.* —

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

62 (2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the  
63 sale of new automobiles that have never been registered in the name of an individual shall be  
64 reduced by 50 percent of the total amount of the tax: *Provided,* That, effective July 1, 2024, the  
65 remaining municipal business and occupation or privilege tax on the sale of new automobiles that  
66 have never been registered in the name of an individual shall be reduced by an additional 50  
67 percent of the total amount of the tax: *Provided, however,* That July 1, 2025, the municipal  
68 business and occupation or privilege tax on the sale of new automobiles that have never been  
69 registered in the name of an individual shall be completely eliminated. For the purposes of this  
70 section, an automobile is a self-propelled vehicle used on the roads and highways by the use of  
71 motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or a

72 combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and an  
73 open loading area at the rear and a sport utility vehicle. An automobile does not include a  
74 motorcycle.

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

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

92 (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and  
93 occupation or privilege tax shall provide procedures for the assessment and collection of the tax,  
94 which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June  
95 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such  
96 provisions as they relate to waiver of penalties and additions to tax.

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

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

102 (i) Any third-party vendors who contract with a city or municipality to collect business and  
103 occupation taxes authorized by this section on behalf of a municipality may not charge for their  
104 services more than 20% of the amount of taxes collected.

105 (j) Municipalities may not impose a business and occupation or privilege tax on any project  
106 that is funded by state or federal government programs.

NOTE: The purpose of this bill is to prohibit municipalities from collecting business and occupation taxes on projects that are funded by state or federal government programs.

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