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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

ENROLLED

HOUSE BILL No. 2685

(By Delegates Kiss, S. Cook, Farris,
Rutledge and P. White)

— ● —

Passed April 10, 1993

In Effect Ninety Days From Passage

ENROLLED
H. B. 2685

(By DELEGATES KISS, S. COOK, FARRIS,
RUTLEDGE AND P. WHITE)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a separate classification of business activity for aerospace services' purposes of determining municipal business and occupation privilege tax liability.

Be it enacted by the Legislature of West Virginia:

That section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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
2 business activity or occupation, for which the state
3 imposed its annual business and occupation or privilege
4 tax under article thirteen, chapter eleven of this code,
5 prior to July one, one thousand nine hundred eighty-
6 seven, is engaged in or carried on within the corporate
7 limits of any municipality, the governing body thereof
8 shall have plenary power and authority, unless prohi-

9 bited by general law, to impose a similar business and
10 occupation tax thereon for the use of the municipality.

11 (2) Municipalities may impose a business and occupa-
12 tion or privilege tax upon every person engaging or
13 continuing within the municipality in the business of
14 aircraft repair, remodeling, maintenance, modification
15 and refurbishing services to any aircraft or to an engine
16 or other component part of any aircraft as a separate
17 business activity.

18 (b) *Maximum tax rates.* — In no case shall the rate
19 of such municipal business and occupation or privilege
20 tax on a particular activity exceed the maximum rate
21 imposed by the state, exclusive of surtaxes, upon any
22 business activities or privileges taxed under sections
23 two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and
24 two-j, article thirteen of said chapter eleven, as such
25 rates were in effect under said article thirteen, on
26 January one, one thousand nine hundred fifty-nine, or
27 in excess of one percent of gross income under section
28 two-k of said article thirteen, or in excess of three tenths
29 of one percent of gross value or gross proceeds of sale
30 under section two-m of said article thirteen. The rate of
31 municipal business and occupation or privilege tax on
32 the activity described in subdivision (2), subsection (a)
33 of this section shall be ten one-hundredths of one
34 percent.

35 (c) *Effective date of local tax.* — Any taxes levied
36 pursuant to the authority of this section may be made
37 operative as of the first day of the then current fiscal
38 year or any date thereafter: *Provided,* That any new
39 imposition of tax or any increase in the rate of tax upon
40 any business, occupation or privilege taxed under
41 section two-e of said article thirteen shall apply only to
42 gross income derived from contracts entered into after
43 the effective date of such imposition of tax or rate
44 increase, and which effective date shall not be retroac-
45 tive in any respect: *Provided, however,* That no tax
46 imposed or revised under this section upon public utility
47 services may be effective unless and until the munic-
48 ipality provides written notice of the same by certified
49 mail to said public utility at least sixty days prior to the

50 effective date of said tax or revision thereof.

51 (d) *Exemptions.* — A municipality shall not impose its
52 business and occupation or privilege tax on any activity
53 that was exempt from the state's business and occupa-
54 tion tax under the provisions of section three, article
55 thirteen of said chapter eleven, prior to July one, one
56 thousand nine hundred eighty-seven, and determined
57 without regard to any annual or monthly monetary
58 exemption also specified therein.

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

85 (f) Where the governing body of a municipality
86 imposes a tax authorized by this section, such governing
87 body shall have the authority to offer tax credits from
88 such 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
91 municipality imposing a business and occupation or
92 privilege tax shall provide procedures for the assess-
93 ment and collection of such tax, which shall be similar
94 to those procedures in article thirteen, chapter eleven of
95 this code, as in existence on June thirtieth, one thousand
96 nine hundred seventy-eight, or to those procedures in
97 article ten, chapter eleven of this code, and shall
98 conform with such provisions as they relate to waiver
99 of penalties and additions to tax.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

Donald Y. Kopp
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within *is* approved this the *12th*
day of *May*, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/93

Time 2:23 PM