

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]

1 A BILL to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating
 2 to 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
 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 may 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 §11-13-2a, §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
 15 code, as such rates were in effect under ~~said~~ §11-13-1 *et seq.* of this code, on January 1, 1959,
 16 or in excess of one percent of gross income under §11-13-2k said code, or in excess of three
 17 tenths of one percent of gross value or gross proceeds of sale under §11-13-2m of said code.
 18 The rate of municipal business and occupation or privilege tax on the activity described in

19 subdivision (2), subsection (a) of this section shall be 10 100ths of one percent. The rate of
20 municipal business and occupation or privilege tax on the activity of a health maintenance
21 organization holding a certificate of authority under ~~the provisions of §33-25A-1 et seq.~~ of this
22 code shall may not exceed one half of one percent to be applied solely to that portion of gross
23 income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the
24 state employee programs administered by the Public Employees Insurance Agency pursuant to
25 §5-16-1 et seq. of this code, and other federal programs for health care items or services provided
26 directly or indirectly by the health maintenance organization, that is expended for administrative
27 expenses; and shall not exceed one half of one percent to be applied to the gross income received
28 from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state
29 employee programs administered by the Public Employees Insurance Agency, and other federal
30 programs for health care items or services provided directly or indirectly by the health
31 maintenance organization: *Provided*, That this tax rate limitation shall may extend to that part of
32 the gross income of health maintenance organizations which is received from the use of real
33 property other than property in which any such company maintains its office or offices in this state,
34 whether such income is in the form of rentals or royalties. This provision concerning the maximum
35 municipal business and occupation tax rate on the activities of health maintenance organizations
36 is effective beginning after December 31, 1996. Any payments of business and occupation tax
37 made by a health maintenance organization to a municipality for calendar year 1997 shall not be
38 subject to recovery by the health maintenance organization. Administrative expenses shall include
39 all expenditures made by a health maintenance organization other than expenses paid for claims
40 incurred or payments 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 §11-13-2e of this code shall apply only to gross income

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

50 (d) *Exemptions.* — A municipality ~~shall~~ may 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
53 any annual or monthly monetary exemption also specified therein: *Provided,* That on and after
54 July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity
55 of a corporation, association, or society organized and operated exclusively for religious or
56 charitable purposes that was exempt from the state's business and occupation tax under ~~the~~
57 ~~provisions of~~ §11-13-3 of this code prior to July 1, 1987, but only to the extent that the income
58 generated by the activity is subject to taxation under the provisions of section 511 of the Internal
59 Revenue Code of 1986, as 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 such legislative
64 regulations as the Tax Commissioner may prescribe.

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 being the intent of the Legislature that multiple taxation of the same gross income,

71 or gross proceeds of sale, under the same classification by two or more municipalities shall not
 72 be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in
 73 or carried on within this state, that is presently subject to state tax under §11-13-2c or §11-13-2h
 74 of this code, which is not taxed or taxable by any other municipality of this state, may be included
 75 in the measure of tax for any municipality in this state, from which the activity was directed, or in
 76 the 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
 78 the 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
 81 the United States, or as permitting a municipality to tax any activity that has a definite situs outside
 82 its taxing jurisdiction.

83 (f) Where the governing body of a municipality imposes a tax authorized by this section,
 84 such governing body shall have the authority to offer tax credits from such tax as incentives for
 85 new and expanding businesses 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 such
 88 tax, which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on
 89 June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with
 90 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.