

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 533

FISCAL  
NOTE

BY SENATOR TARR

[Introduced March 2, 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 allowable limits of business and occupation taxes imposed on sale of automobiles.

*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 article thirteen,  
 3 chapter eleven of this code, prior to July 1, 1987, is engaged in or carried on within the corporate  
 4 limits of any municipality, the governing body thereof shall have plenary power and authority,  
 5 unless prohibited by general law, to impose a similar business and occupation tax thereon for the  
 6 use of 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, §11-13-2a, §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 of this code, or in excess of three  
 17 tenths of one percent of gross value or gross proceeds of sale under §11-13-2m of this code. The  
 18 rate of municipal business and occupation or privilege tax on the activity described in subdivision  
 19 (2), subsection (a) of this section shall be ten one-hundredths 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 not exceed one half of one percent to be applied solely to that portion of gross income  
23 received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state  
24 employee programs administered by the Public Employees Insurance Agency pursuant to §5-16-  
25 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 not 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. Effective July 1,  
41 2021, the rate of municipal business and occupation or privilege tax on the activity of a selling  
42 used automobiles shall not exceed one fifteenth of one percent to be applied solely to that portion  
43 of gross income received from the sales proceeds of used automobiles that have previously been  
44 registered in an individual's name.

45 (c) *Effective date of local tax.* -- Any taxes levied pursuant to the authority of this section  
46 may be made operative as of the first day of the then current fiscal year or any date thereafter:

47 *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business,  
48 occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross  
49 income derived from contracts entered into after the effective date of such imposition of tax or  
50 rate increase, and which effective date shall not be retroactive in any respect: *Provided, however*,  
51 That no tax imposed or revised under this section upon public utility services may be effective  
52 unless and until the municipality provides written notice of the same by certified mail to said public  
53 utility at least sixty days prior to the effective date of said tax or revision thereof.

54 (d) *Exemptions.* -- A municipality shall not impose its business and occupation or privilege  
55 tax on any activity that was exempt from the state's business and occupation tax under the  
56 provisions of §11-13-3, prior to July 1, 1987, and determined without regard to any annual or  
57 monthly monetary exemption also specified therein: *Provided*, That on and after July 1, 2007, a  
58 municipality may impose its business and occupation or privilege tax on any activity of a  
59 corporation, association or society organized and operated exclusively for religious or charitable  
60 purposes that was exempt from the state's business and occupation tax under the provisions of  
61 section three, article thirteen of chapter eleven, prior to July 1, 1987, but only to the extent that  
62 the income generated by the activity is subject to taxation under the provisions of section 511 of  
63 the Internal Revenue Code of 1986, as amended. Furthermore, effective July 1, 2021, imposition  
64 of the municipal business and occupation or privilege tax on the business of selling automobiles  
65 is limited to used automobiles only; any sales proceeds from the sale of new automobiles that  
66 have never been registered in the name of an individual are exempt from the municipal business  
67 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, taxable by each municipality shall be determined in  
71 accordance with such legislative regulations as the Tax Commissioner may prescribe. It being the  
72 intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of

73 sale, under the same classification by two or more municipalities shall not be allowed, and that  
74 gross income, or gross proceeds of sales, derived from activity engaged in or carried on within  
75 this state, that is presently subject to state tax under §11-13-2c or x§11-13-2h of this code, which  
76 is not taxed or taxable by any other municipality of this state, may be included in the measure of  
77 tax for any municipality in this state, from which the activity was directed, or in the absence thereof,  
78 the municipality in this state in which the principal office of the taxpayer is located. Nothing in this  
79 subsection shall be construed as permitting any municipality to tax gross income or gross  
80 proceeds of sales in violation of the Constitution and laws of this state or the United States, or as  
81 permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

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

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

NOTE: The purpose of this bill is to limit the rate of business and occupation tax a municipality charges and collects on the sale of used automobile to one tenth of one percent and to exempt the sale of new automobiles from the business and occupation tax price.

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