

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4651**

BY DELEGATES FOSTER, KIMES, STEELE, AND CROUSE

[Introduced February 11, 2022; 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; and to  
2 amend said code by adding thereto a new section, designated §11-13-32, all relating to  
3 setting a limit on the amount of fees that may be collected by third party vendors or  
4 contractors who collect business and occupation taxes on behalf of a city or municipality.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **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 sections two-a, two-  
14 b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as  
15 such rates were in effect under said article thirteen, on January 1, 1959, or in excess of one  
16 percent of gross income under section two-k of said article thirteen, or in excess of three tenths

17 of one percent of gross value or gross proceeds of sale under section two-m of said article  
18 thirteen. The rate of municipal business and occupation or privilege tax on the activity described  
19 in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The  
20 rate of 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 article twenty-five-a, chapter  
22 thirty-three of this code, shall not exceed one half of one percent to be applied solely to that portion  
23 of gross income received from the Medicaid program pursuant to Title XIX of the Social Security  
24 Act, the state employee programs administered by the Public Employees Insurance Agency  
25 pursuant to article sixteen, chapter five of this code, and other federal programs, for health care  
26 items or services provided directly or indirectly by the health maintenance organization, that is  
27 expended for administrative expenses; and shall not exceed one half of one percent to be applied  
28 to the gross income received from enrollees, or from employers on behalf of enrollees, from  
29 sources other than Medicaid, state employee programs administered by the Public Employees  
30 Insurance Agency and other federal programs for health care items or services provided directly  
31 or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall  
32 not extend to that part of the gross income of health maintenance organizations which is received  
33 from the use of real property other than property in which any such company maintains its office  
34 or offices in this state, whether such income is in the form of rentals or royalties. This provision  
35 concerning the maximum municipal business and occupation tax rate on the activities of health  
36 maintenance organizations is effective beginning after December 31, 1996. Any payments of  
37 business and occupation tax made by a health maintenance organization to a municipality for  
38 calendar year 1997 shall not be subject to recovery by the health maintenance organization.  
39 Administrative expenses shall include all expenditures made by a health maintenance  
40 organization other than expenses paid for claims incurred or payments made to providers for the  
41 benefits received by enrollees.

42 (c) *Effective date of local tax.* -- Any taxes levied pursuant to the authority of this section

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

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

61 (e) *Activity in two or more municipalities*. -- Whenever the business activity or occupation  
62 of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount  
63 of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in  
64 accordance with such legislative regulations as the Tax Commissioner may prescribe. It being the  
65 intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of  
66 sale, under the same classification by two or more municipalities shall not be allowed, and that  
67 gross income, or gross proceeds of sales, derived from activity engaged in or carried on within  
68 this state, that is presently subject to state tax under section two-c or two-h, article thirteen,

69 chapter eleven of this code, which is not taxed or taxable by any other municipality of this state,  
 70 may be included in the measure of tax for any municipality in this state, from which the activity  
 71 was directed, or in the absence thereof, the municipality in this state in which the principal office  
 72 of the taxpayer is located. Nothing in this subsection shall be construed as permitting any  
 73 municipality to tax gross income or gross proceeds of sales in violation of the Constitution and  
 74 laws of this state or the United States, or as permitting a municipality to tax any activity that has  
 75 a definite situs outside its taxing jurisdiction.

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

79 (g) *Administrative provisions.* -- The ordinance of a municipality imposing a business and  
 80 occupation or privilege tax shall provide procedures for the assessment and collection of such  
 81 tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as  
 82 in existence on June 30, 1978, or to those procedures in article ten, chapter eleven of this code,  
 83 and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

84 (h) Any third-party vendor who contracts with a city or municipality to collect business and  
 85 occupation taxes on behalf of a city or municipality may not charge more than 20% of the amount  
 86 of taxes collected for their services. This 20% cap is applicable for business and occupation taxes,  
 87 for the 1% service tax associated therein, and for the business license of the company or  
 88 contractor collecting on behalf of the city or municipality.

## CHAPTER 11. TAXATION.

### ARTICLE 13. BUSINESS AND OCCUPATION TAX.

#### §11-13-32. Cap on fee for third party vendors.

1 Any third-party vendor who contracts with a city or municipality to collect business and  
 2 occupation taxes on behalf of a city or municipality may not charge more than 20% of the amount

- 3 of taxes collected for their services. This 20% cap is applicable for business and occupation taxes,  
4 for the 1% service tax associated therein, and for the business license of the company or  
5 contractor collecting on behalf of the city or municipality.

NOTE: The purpose of this bill is to cap the amount of moneys to which third party vendors or contractors who collect business and occupation taxes on behalf of cities or municipalities may be entitled to for their services.

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