

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3321

By Delegates Howell, Thorne, Storch, Ferrell,
Heckert, Clark, Chiarelli, Holstein, Keaton, Toney, and
Horst

[Introduced February 07, 2023; 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 limiting the imposition of municipal business and occupation taxes.

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: Provided, That no political subdivision or municipality may compute, impose or
7 collect a business and occupation tax in any tax year after 2022 upon any category of business
8 activity for which the political subdivision or municipality was not computing or imposing in or
9 before tax year 2023.

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

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

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

44 (c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section
45 may be made operative as of the first day of the then current fiscal year or any date thereafter:
46 *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business,

47 occupation or privilege taxed under §11-2E-1 *et seq.* of this code, applies only to gross income
48 derived from contracts entered into after the effective date of the imposition of tax or rate increase,
49 and which effective date shall not be retroactive in any respect: *Provided, however,* That no tax
50 imposed or revised under this section upon public utility services may be effective unless and until
51 the municipality provides written notice of the same by certified mail to said public utility at least 60
52 days prior to the effective date of said tax or revision thereof.

53 (d) *Exemptions.* –

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

64 (2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the
65 sale of new automobiles that have never been registered in the name of an individual shall be
66 reduced by 50% percent of the total amount of the tax: *Provided,* That, effective July 1, 2024, the
67 remaining municipal business and occupation or privilege tax on the sale of new automobiles that
68 have never been registered in the name of an individual shall be reduced by an additional 50% of
69 the total amount of the tax: *Provided, however,* That effective July 1, 2025, the municipal business
70 and occupation or privilege tax on the sale of new automobiles that have never been registered in
71 the name of an individual shall be completely eliminated. For the purposes of this section an
72 automobile is a self-propelled vehicle used primarily for the transportation of passengers and their

73 effects and operated on the roads and highways by the use of motor vehicle fuel or propelled by
74 one or more electric motors using energy stored in batteries or a combination thereof. An
75 automobile shall include a light-duty truck with an enclosed cabin and an open loading area at the
76 rear and a sport utility vehicle. An automobile does not include a motorcycle.

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

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

94 (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and
95 occupation or privilege tax shall provide procedures for the assessment and collection of the tax,
96 which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June
97 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such
98 provisions as they relate to waiver of penalties and additions to tax.

99 (h) *Timely payment.* — Payments for taxes due under this section that are postmarked
100 after the due date by which they are owed shall be considered late and may be subject to late fees
101 or penalties: *Provided*, That payments that are received by the municipality after the due date, but
102 that were postmarked on or before the due date shall be considered to be on time and shall not be
103 assessed any late fees or penalties.

NOTE: The purpose of this bill is to limit the imposition of municipal business and occupation taxes.

West Virginia Code §8-13-5 was amended by two bills passed during the 2022 Regular Session of the Legislature, by the House. House Bill 4636 (passed last on March 12, 2022); House Bill 4567 (passed first on March 11, 2022). The two versions of this section have been merged into this bill. The bill passed first modified subsection (d) related to exemptions by adding two subsections, which have been included.

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