

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 3327

FISCAL  
NOTE

By Delegates Foster and Crouse

[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; 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.* –

2 (1) Whenever any business activity or occupation, for which the state imposed its annual  
 3 business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to  
 4 July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the  
 5 governing body thereof shall have plenary power and authority, unless prohibited by general law,  
 6 to impose a similar business and occupation tax thereon for the 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, remodeling,  
 9 maintenance, modification, and refurbishing services to any aircraft or to an engine or other  
 10 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-b,  
 14 two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such  
 15 rates were in effect under said article thirteen, on January 1, 1959, or in excess of one percent of  
 16 gross income under section two-k of said article thirteen, or in excess of three tenths of one

17 percent of gross value or gross proceeds of sale under section two-m of said article thirteen. 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 municipal  
20 business and occupation or privilege tax on the activity of a health maintenance organization  
21 holding a certificate of authority under the provisions of article twenty-five-a, chapter thirty-three of  
22 this code, shall 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 article sixteen, chapter five of this code, and other federal programs, for health care items or  
26 services provided directly or indirectly by the health maintenance organization, that is expended  
27 for administrative expenses; and shall not exceed one half of one percent to be applied to the  
28 gross income received from enrollees, or from employers on behalf of enrollees, from sources  
29 other than Medicaid, state employee programs administered by the Public Employees Insurance  
30 Agency and other federal programs for health care items or services provided directly or indirectly  
31 by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to  
32 that part of the gross income of health maintenance organizations which is received from the use  
33 of real property other than property in which any such company maintains its office or offices in this  
34 state, whether such income is in the form of rentals or royalties. This provision concerning the  
35 maximum municipal business and occupation tax rate on the activities of health maintenance  
36 organizations is effective beginning after December 31, 1996. Any payments of business and  
37 occupation tax made by a health maintenance organization to a municipality for calendar year  
38 1997 shall not be subject to recovery by the health maintenance organization. Administrative  
39 expenses shall include all expenditures made by a health maintenance organization other than  
40 expenses paid for claims incurred or payments made to providers for the benefits received by  
41 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 rate  
47 increase, and which effective date shall not be retroactive in any respect: *Provided, however*, That  
48 no tax imposed or revised under this section upon public utility services may be effective unless  
49 and until the municipality provides written notice of the same by certified mail to said public utility at  
50 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 July  
59 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under  
60 the provisions of 26 USCS § 511 as amended.

61 (e) *Activity in two or more municipalities*. -- Whenever the business activity or occupation of  
62 the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of  
63 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 sale,  
66 under the same classification by two or more municipalities shall not be allowed, and that gross  
67 income, or gross proceeds of sales, derived from activity engaged in or carried on within this state,  
68 that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of

69 this code, which is not taxed or taxable by any other municipality of this state, may be included in  
70 the measure of tax for any municipality in this state, from which the activity was directed, or in the  
71 absence thereof, the municipality in this state in which the principal office of the taxpayer is  
72 located. Nothing in this subsection shall be construed as permitting any municipality to tax gross  
73 income or gross proceeds of sales in violation of the Constitution and laws of this state or the  
74 United States, or as permitting a municipality to tax any activity that has a definite situs outside its  
75 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 tax,  
81 which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in  
82 existence on June 30, 1978, or to those procedures in article ten, chapter eleven of this code, and  
83 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.