

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4762

By Delegate Burkhammer

[Introduced January 16, 2024; Referred
to the Committee on Political Subdivisions then
Finance]

1 A BILL to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended; relating to
2 prohibiting municipalities from collecting business and occupation taxes on projects that
3 are funded by state or federal government programs.

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.

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, except those funded by state or
11 federal government programs.

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

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

46 derived from contracts entered into after the effective date of the imposition of tax or rate increase,
47 and which effective date shall not be retroactive in any respect: *Provided, however,* That no tax
48 imposed or revised under this section upon public utility services may be effective unless and until
49 the municipality provides written notice of the same by certified mail to said public utility at least 60
50 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 §11-13-3 of this code, prior to July 1, 1987, and determined without regard to any
54 annual or monthly monetary exemption also specified therein: *Provided,* That on and after July 1,
55 2007, a municipality may impose its business and occupation or privilege tax on any activity of a
56 corporation, association, or society organized and operated exclusively for religious or charitable
57 purposes that was exempt from the state's business and occupation tax under the provisions of
58 §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by the
59 activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of 1986, as
60 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 of
63 gross income, or gross proceeds of sales, taxable by each municipality shall be determined in
64 accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the
65 Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the
66 same classification by two or more municipalities shall not be allowed, and that gross income, or
67 gross proceeds of sales, derived from activity engaged in or carried on within this state, that is
68 presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or
69 taxable by any other municipality of this state, may be included in the measure of tax for any
70 municipality in this state, from which the activity was directed, or in the absence thereof, the
71 municipality in this state in which the principal office of the taxpayer is located. Nothing in this

72 subsection shall be construed as permitting any municipality to tax gross income or gross
73 proceeds of sales in violation of the Constitution and laws of this state or the United States, or as
74 permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

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

78 (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and
79 occupation or privilege tax shall provide procedures for the assessment and collection of the tax,
80 which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June
81 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such
82 provisions as they relate to waiver of penalties and additions to tax.

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

88 (i) Municipalities may not impose a business and occupation or privilege tax on any project
89 that is funded by state or federal government programs.

NOTE: The purpose of this bill is to prohibit municipalities from collecting business and occupation taxes on projects that are funded by state or federal government programs.

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