

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4812

By Delegate Foster

[Originating in the Committee on Finance; Reported
on February 22, 2024]

1 A BILL to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating to
2 business and occupation or privilege tax imposed by municipalities; and setting a limit on
3 the amount of fees that may be collected by third party vendors or contractors who collect
4 business and occupation taxes on behalf of a municipality.

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.

11 (b) *Maximum tax rates.* — In no case shall the rate of the 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 code,
15 as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess
16 of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one
17 percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of
18 municipal business and occupation or privilege tax on the activity described in subdivision (2),

19 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 §33-25A-1 *et seq.* of this code, shall not
22 exceed one-half of one percent to be applied solely to that portion of gross income received from
23 the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee
24 programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.* of
25 this code, and other federal programs, for health care items or services provided directly or
26 indirectly by the health maintenance organization, that is expended for administrative expenses;
27 and shall not exceed one half of one percent to be applied to the gross income received from
28 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 the
32 gross income of health maintenance organizations which is received from the use of real property
33 other than property in which any company maintains its office or offices in this state, whether the
34 income is in the form of rentals or royalties. This provision concerning the maximum municipal
35 business and occupation tax rate on the activities of health maintenance organizations is effective
36 beginning after December 31, 1996. Any payments of business and occupation tax made by a
37 health maintenance organization to a municipality for calendar year 1997 is not subject to recovery
38 by the health maintenance organization. Administrative expenses shall include all expenditures
39 made by a health maintenance organization other than expenses paid for claims incurred or
40 payments made to providers for the benefits received by enrollees.

41 (c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section
42 may be made operative as of the first day of the then current fiscal year or any date thereafter:
43 *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business,
44 occupation or privilege taxed under ~~§11-2E-1 *et seq.*~~ §11-13-2e of this code, applies only to gross

45 income derived from contracts entered into after the effective date of the imposition of tax or rate
46 increase, and which effective date shall not be retroactive in any respect: *Provided, however,* That
47 no tax imposed or revised under this section upon public utility services may be effective unless
48 and until the municipality provides written notice of the same by certified mail to said public utility at
49 least 60 days prior to the effective date of said tax or revision thereof.

50 (d) *Exemptions.* —

51 (1) A municipality shall not impose its business and occupation or privilege tax on any
52 activity that was exempt from the state’s business and occupation tax under the provisions of §11-
53 13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly
54 monetary exemption also specified therein: *Provided,* That on and after July 1, 2007, a
55 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 (2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the
62 sale of new automobiles that have never been registered in the name of an individual shall be
63 reduced by 50 percent of the total amount of the tax: *Provided,* That, effective July 1, 2024, the
64 remaining municipal business and occupation or privilege tax on the sale of new automobiles that
65 have never been registered in the name of an individual shall be reduced by an additional 50
66 percent of the total amount of the tax: *Provided, however,* That July 1, 2025, the municipal
67 business and occupation or privilege tax on the sale of new automobiles that have never been
68 registered in the name of an individual shall be completely eliminated. For the purposes of this
69 section, an automobile is a self-propelled vehicle used on the roads and highways by the use of
70 motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or a

71 combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and an
72 open loading area at the rear and a sport utility vehicle. An automobile does not include a
73 motorcycle.

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

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

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

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

101 (i) Any third-party vendors who contract with a city or municipality to collect business and
102 occupation taxes authorized by this section on behalf of a municipality may not charge for their
103 services more than 20% of the amount of taxes collected.