

3154

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

— ● —

ENROLLED

HOUSE BILL No. 3154

(By ~~Mr.~~ *Del. Roop & Del. Hale*)

— ● —

Passed *February 2,* 1988

In Effect *Ninety Days From* Passage

ENROLLED
H. B. 3154

(By DELEGATES ROOP and HALE)

[Passed February 2, 1988; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal business and occupation or privilege taxes; and providing that no business and occupation tax imposed by a municipality upon public utility services may be effective unless the municipality provides written notice of the same to said public utility at least sixty days prior to the effective date of the tax.

Be it enacted by the Legislature of West Virginia:

That section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

PART I. POWERS OF TAXATION.

§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.* — Whenever any
2 business activity or occupation, for which the state
3 imposed its annual business and occupation or privilege
4 tax under article thirteen, chapter eleven of this code,
5 prior to July one, one thousand nine hundred eighty-
6 seven, is engaged in or carried on within the corporate

7 limits of any municipality, the governing body thereof
8 shall have plenary power and authority, unless prohi-
9 bited by general law, to impose a similar business and
10 occupation tax thereon for the use of the municipality.

11 (b) *Maximum tax rates.* — In no case shall the rate
12 of such municipal business and occupation or privilege
13 tax on a particular activity exceed the maximum rate
14 imposed by the state, exclusive of surtaxes, upon any
15 business activities or privileges taxed under sections
16 two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and
17 two-j, article thirteen of said chapter eleven, as such
18 rates were in effect under said article thirteen, on
19 January one, one thousand nine hundred fifty-nine, or
20 in excess of one percent of gross income under section
21 two-k of said article thirteen, or in excess of three tenths
22 of one percent of gross value or gross proceeds of sale
23 under section two-m of said article thirteen.

24 (c) *Effective date of local tax.* — Any taxes levied
25 pursuant to the authority of this section may be made
26 operative as of the first day of the then current fiscal
27 year or any date thereafter: *Provided,* That any new
28 imposition of tax or any increase in the rate of tax upon
29 any business, occupation or privilege taxed under
30 section two-e of said article thirteen shall apply only to
31 gross income derived from contracts entered into after
32 the effective date of such imposition of tax or rate
33 increase, and which effective date shall not be retroac-
34 tive in any respect: *Provided, however,* That no tax
35 imposed or revised under this section upon public utility
36 services may be effective unless and until the munici-
37 pality provides written notice of the same by certified
38 mail to said public utility at least sixty days prior to the
39 effective date of said tax or revision thereof.

40 (d) *Exemptions.* — A municipality shall not impose its
41 business and occupation or privilege tax on any activity
42 that was exempt from the state's business and occupa-
43 tion tax under the provisions of section three, article
44 thirteen of said chapter eleven, prior to July one, one
45 thousand nine hundred eighty-seven, and determined
46 without regard to any annual or monthly monetary
47 exemption also specified therein.

48 (e) *Activity in two or more municipalities.* — When-
49 ever the business activity or occupation of the taxpayer
50 is engaged in or carried on in two or more municipal-
51 ities of this state, the amount of gross income, or gross
52 proceeds of sales, taxable by each municipality shall be
53 determined in accordance with such legislative regula-
54 tions as the tax commissioner may prescribe. It being
55 the intent of the Legislature that multiple taxation of
56 the same gross income, or gross proceeds of sale, under
57 the same classification by two or more municipalities
58 shall not be allowed, and that gross income, or gross
59 proceeds of sales, derived from activity engaged in or
60 carried on within this state, that is presently subject to
61 state tax under section two-c or two-h, article thirteen,
62 chapter eleven of this code, which is not taxed or taxable
63 by any other municipality of this state, may be included
64 in the measure of tax for any municipality in this state,
65 from which the activity was directed, or in the absence
66 thereof, the municipality in this state in which the
67 principal office of the taxpayer is located. Nothing in
68 this subsection (e) shall be construed as permitting any
69 municipality to tax gross income or gross proceeds of
70 sales in violation of the constitution and laws of this state
71 or the United States, or as permitting a municipality to
72 tax any activity that has a definite situs outside its
73 taxing jurisdiction.

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

79 (g) *Administrative provisions.* — The ordinance of a
80 municipality imposing a business and occupation or
81 privilege tax shall provide procedures for the assess-
82 ment and collection of such tax, which shall be similar
83 to those procedures in article thirteen, chapter eleven of
84 this code, as in existence on June thirtieth, one thousand
85 nine hundred seventy-eight, or to those procedures in
86 article ten, chapter eleven of this code, and shall
87 conform with such provisions as they relate to waiver
88 of penalties and additions to tax.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Robert O. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Lodd C. Halls
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Dan Tombari
President of the Senate

Robert M. Bell
Speaker of the House of Delegates

The within *appeared* this the *15th*
day of *February*, 1988.

Luha Sharrif
Governor

PRESENTED TO THE

GOVERNOR

Date 2/11/88

Time 2:35 p.m.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE