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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

ENROLLED

HOUSE BILL No. 2685

(By Delegates Y is S. Cook Farris) Rutlidge and P. White)

Passed April 10, 1993 In Effect Minity Days Orim Passage 0 (SCUG)

ENROLLED H. B. 2685

(By Delegates Kiss, S. Cook, Farris, Rutledge and P. White)

[Passed April 10, 1993; 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 providing for a separate classification of business activity for aerospace services' purposes of determining municipal business and occupation privilege tax liability.

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.

§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.

(a) Authorization to impose tax. - (1) Whenever any 1 business activity or occupation, for which the state 2 3 imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, 4 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 prohiEnr. H. B. 2685]

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9 bited by general law, to impose a similar business and10 occupation tax thereon for the use of the municipality.

11 (2) Municipalities may impose a business and occupa-12 tion or privilege tax upon every person engaging or 13 continuing within the municipality in the business of 14 aircraft repair, remodeling, maintenance, modification 15 and refurbishing services to any aircraft or to an engine 16 or other component part of any aircraft as a separate 17 business activity.

18 (b) Maximum tax rates. - In no case shall the rate 19 of such municipal business and occupation or privilege 20 tax on a particular activity exceed the maximum rate 21 imposed by the state, exclusive of surtaxes, upon any 22 business activities or privileges taxed under sections 23 two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and 24 two-j, article thirteen of said chapter eleven, as such 25 rates were in effect under said article thirteen, on 26 January one, one thousand nine hundred fifty-nine, or 27 in excess of one percent of gross income under section 28 two-k of said article thirteen, or in excess of three tenths 29 of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen. The rate of 30 31 municipal business and occupation or privilege tax on 32 the activity described in subdivision (2), subsection (a) 33 of this section shall be ten one-hundredths of one 34 percent.

35 (c) Effective date of local tax. — Any taxes levied 36 pursuant to the authority of this section may be made 37 operative as of the first day of the then current fiscal 38 year or any date thereafter: Provided, That any new 39 imposition of tax or any increase in the rate of tax upon 40 any business, occupation or privilege taxed under 41 section two-e of said article thirteen shall apply only to 42 gross income derived from contracts entered into after 43 the effective date of such imposition of tax or rate increase, and which effective date shall not be retroac-44 tive in any respect: Provided, however, That no tax 45 imposed or revised under this section upon public utility 46 47 services may be effective unless and until the munici-48 pality provides written notice of the same by certified 49 mail to said public utility at least sixty days prior to the

50 effective date of said tax or revision thereof.

51 (d) *Exemptions.* — A municipality shall not impose its 52 business and occupation or privilege tax on any activity 53 that was exempt from the state's business and occupa-54 tion tax under the provisions of section three, article thirteen of said chapter eleven, prior to July one, one 55 56 thousand nine hundred eighty-seven, and determined 57 without regard to any annual or monthly monetary 58 exemption also specified therein.

59 (e) Activity in two or more municipalities. - When-60 ever the business activity or occupation of the taxpayer 61 is engaged in or carried on in two or more municipal-62 ities of this state, the amount of gross income, or gross 63 proceeds of sales, taxable by each municipality shall be 64 determined in accordance with such legislative regula-65 tions as the tax commissioner may prescribe. It being 66 the intent of the Legislature that multiple taxation of 67 the same gross income, or gross proceeds of sale, under 68 the same classification by two or more municipalities 69 shall not be allowed, and that gross income, or gross 70 proceeds of sales, derived from activity engaged in or 71 carried on within this state, that is presently subject to 72 state tax under section two-c or two-h, article thirteen. 73 chapter eleven of this code, which is not taxed or taxable 74 by any other municipality of this state, may be included 75 in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence 76 thereof, the municipality in this state in which the 77 principal office of the taxpayer is located. Nothing in 78 79 this subsection (e) shall be construed as permitting any 80 municipality to tax gross income or gross proceeds of 81 sales in violation of the constitution and laws of this state 82 or the United States, or as permitting a municipality to 83 tax any activity that has a definite situs outside its 84 taxing jurisdiction.

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

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(g) Administrative provisions. - The ordinance of a 90 91 municipality imposing a business and occupation or privilege tax shall provide procedures for the assess-92 93 ment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of 94 this code, as in existence on June thirtieth, one thousand 95 nine hundred seventy-eight, or to those procedures in 96 97 article ten, chapter eleven of this code, and shall 98 conform with such provisions as they relate to waiver 99 of penalties and additions to tax.

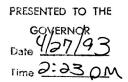
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committe Chairman House Committee

Originating in the House.

Takes effect ninety days from passage. Clerk of the Senate the House esident of the Senate ____. Speaker of the House of Delegates The within ... 1993. day of overna O GCUG CM



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