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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4518

(By Delegates Beane, Mezzatesta and Michael)



Passed March 14, 1998

In Effect Ninety Days from Passage

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SENATE OF WEST VIRGINIA

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H. B. 4518

(BY DELEGATES BEANE, MEZZATESTA AND MICHAEL)

[Passed March 14, 1998; 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 business and occupation or privilege tax; limitation on rates; treatment of health maintenance organizations; effective date of tax on health maintenance organizations.

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.

1 (a) *Authorization to impose tax.* — (1) 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, prior
5 to July one, one thousand nine hundred eighty-seven, is
6 engaged in or carried on within the corporate limits of any
7 municipality, the governing body thereof shall have

8 plenary power and authority, unless prohibited by general
9 law, to impose a similar business and occupation tax
10 thereon for the use of the municipality.

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

18 (b) *Maximum tax rates.* — In no case shall the rate of
19 such municipal business and occupation or privilege tax
20 on a particular activity exceed the maximum rate imposed
21 by the state, exclusive of surtaxes, upon any business
22 activities or privileges taxed under sections two-a, two-b,
23 two-c, two-d, two-e, two-g, two-h, two-i and two-j, article
24 thirteen of said chapter eleven, as such rates were in effect
25 under said article thirteen, on January one, one thousand
26 nine hundred fifty-nine, or in excess of one percent of
27 gross income under section two-k of said article thirteen,
28 or in excess of three tenths of one percent of gross value
29 or gross proceeds of sale under section two-m of said
30 article thirteen. The rate of municipal business and
31 occupation or privilege tax on the activity described in
32 subdivision (2), subsection (a) of this section shall be ten
33 one-hundredths of one percent. The rate of municipal
34 business and occupation or privilege tax on the activity of
35 a health maintenance organization holding a certificate of
36 authority under the provisions of article twenty-five-a,
37 chapter thirty-three of this code, shall not exceed one-half
38 of one percent to be applied solely to that portion of gross
39 income received from the medicaid program pursuant to
40 Title XIX of the Social Security Act, the state employee
41 programs administered by the public employees insurance
42 agency pursuant to article sixteen, chapter five of this
43 code, and other federal programs, for health care items or
44 services provided directly or indirectly by the health
45 maintenance organization, that is expended for
46 administrative expenses; and shall not exceed one-half of
47 one percent to be applied to the gross income received
48 from enrollees, or from employers on behalf of enrollees,

49 from sources other than medicaid, state employee
50 programs administered by the public employees insurance
51 agency and other federal programs for health care items
52 or services provided directly or indirectly by the health
53 maintenance organization: *Provided*, That this tax rate
54 limitation shall not extend to that part of the gross income
55 of health maintenance organizations which is received
56 from the use of real property other than property in which
57 any such company maintains its office or offices, in this
58 State, whether such income is in the form of rentals or
59 royalties. This provision concerning the maximum
60 municipal business and occupation tax rate on the
61 activities of health maintenance organizations is effective
62 beginning after the thirty-first day of December, one
63 thousand nine hundred ninety-six. Any payments of
64 business and occupation tax made by a health
65 maintenance organization to a municipality for calendar
66 year one thousand nine hundred ninety-seven shall not be
67 subject to recovery by the health maintenance
68 organization. Administrative expenses shall include all
69 expenditures made by a health maintenance organization
70 other than expenses paid for claims incurred or payments
71 made to providers for the benefits received by enrollees.

72 (c) *Effective date of local tax.* — Any taxes levied
73 pursuant to the authority of this section may be made
74 operative as of the first day of the then current fiscal year
75 or any date thereafter: *Provided*, That any new imposition
76 of tax or any increase in the rate of tax upon any business,
77 occupation or privilege taxed under section two-e of said
78 article thirteen shall apply only to gross income derived
79 from contracts entered into after the effective date of such
80 imposition of tax or rate increase, and which effective date
81 shall not be retroactive in any respect: *Provided, however*,
82 That no tax imposed or revised under this section upon
83 public utility services may be effective unless and until the
84 municipality provides written notice of the same by
85 certified mail to said public utility at least sixty days prior
86 to the effective date of said tax or revision thereof.

87 (d) *Exemptions.* — A municipality shall not impose its
88 business and occupation or privilege tax on any activity
89 that was exempt from the state's business and occupation

90 tax under the provisions of section three, article thirteen of
91 said chapter eleven, prior to July one, one thousand nine
92 hundred eighty-seven, and determined without regard to
93 any annual or monthly monetary exemption also specified
94 therein.

95 (e) *Activity in two or more municipalities.* — Whenever
96 the business activity or occupation of the taxpayer is
97 engaged in or carried on in two or more municipalities of
98 this state, the amount of gross income, or gross proceeds
99 of sales, taxable by each municipality shall be determined
100 in accordance with such legislative regulations as the tax
101 commissioner may prescribe. It being the intent of the
102 Legislature that multiple taxation of the same gross
103 income, or gross proceeds of sale, under the same
104 classification by two or more municipalities shall not be
105 allowed, and that gross income, or gross proceeds of sales,
106 derived from activity engaged in or carried on within this
107 state, that is presently subject to state tax under section
108 two-c or two-h, article thirteen, chapter eleven of this code,
109 which is not taxed or taxable by any other municipality of
110 this state, may be included in the measure of tax for any
111 municipality in this state, from which the activity was
112 directed, or in the absence thereof, the municipality in this
113 state in which the principal office of the taxpayer is
114 located. Nothing in this subsection (e) shall be construed
115 as permitting any municipality to tax gross income or
116 gross proceeds of sales in violation of the constitution and
117 laws of this state or the United States, or as permitting a
118 municipality to tax any activity that has a definite situs
119 outside its taxing jurisdiction.

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

125 (g) *Administrative provisions.* — The ordinance of a
126 municipality imposing a business and occupation or
127 privilege tax shall provide procedures for the assessment
128 and collection of such tax, which shall be similar to those
129 procedures in article thirteen, chapter eleven of this code,

130 as in existence on June thirtieth, one thousand nine
131 hundred seventy-eight, or to those procedures in article
132 ten, chapter eleven of this code, and shall conform with
133 such provisions as they relate to waiver of penalties and
134 additions to tax.

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

Paul Hoover
Chairman Senate Committee

Neil Fontana
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Kenneth R. Reeves
Clerk of the Senate

Bryan A. Bay
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Robert L. Frick
Speaker of the House of Delegates

The within *approved* this the *8th*
day of *April*, 1998.

Earl R. Anderson
Governor

PRESENTED TO THE

GOVERNOR

Date 4/6/98

Time 12:00 pm