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
ENROLLED

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 business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July one, one thousand nine hundred eighty-seven, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have
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plenary power and authority, unless prohibited by general
law, to impose a similar business and occupation tax
thereon for the use of the municipality.

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

(b) Maximum tax rates. — In no case shall the rate of
such municipal business and occupation or privilege tax
on a particular activity exceed the maximum rate imposed
by the state, exclusive of surtaxes, upon any business
activities or privileges taxed under sections two-a, two-b,
two-c, two-d, two-e, two-g, two-h, two-i and two-j, article
thirteen of said chapter eleven, as such rates were in effect
under said article thirteen, on January one, one thousand
nine hundred fifty-nine, or in excess of one percent of
gross income under section two-k of said article thirteen,
or in excess of three tenths of one percent of gross value
or gross proceeds of sale under section two-m of said
article thirteen. The rate of municipal business and
occupation or privilege tax on the activity described in
subdivision (2), subsection (a) of this section shall be ten
one-hundredths of one percent. The rate of municipal
business and occupation or privilege tax on the activity of
a health maintenance organization holding a certificate of
authority under the provisions of article twenty-five-a,
chapter thirty-three of this code, shall not exceed one-half
of one percent to be applied solely to that portion of gross
income received from the medicaid program pursuant to
Title XIX of the Social Security Act, the state employee
programs administered by the public employees insurance
agency pursuant to article sixteen, chapter five of this
code, and other federal programs, for health care items or
services provided directly or indirectly by the health
maintenance organization, that is expended for
administrative expenses; and shall not exceed one-half of
one percent to be applied to the gross income received
from enrollees, or from employers on behalf of enrollees,
from sources other than medicaid, state employee
programs administered by the public employees insurance
agency and other federal programs for health care items
or services provided directly or indirectly by the health
maintenance organization: Provided, That this tax rate
limitation shall not extend to that part of the gross income
of health maintenance organizations which is received
from the use of real property other than property in which
any such company maintains its office or offices, in this
State, whether such income is in the form of rentals or
royalties. This provision concerning the maximum
municipal business and occupation tax rate on the
activities of health maintenance organizations is effective
beginning after the thirty-first day of December, one
thousand nine hundred ninety-six. Any payments of
business and occupation tax made by a health
maintenance organization to a municipality for calendar
year one thousand nine hundred ninety-seven shall not be
subject to recovery by the health maintenance
organization. Administrative expenses shall include all
expenditures made by a health maintenance organization
other than expenses paid for claims incurred or payments
made to providers for the benefits received by enrollees.

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

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

(e) *Activity in two or more municipalities.* — Whenever
the business activity or occupation of the taxpayer is
engaged in or carried on in two or more municipalities of
this state, the amount of gross income, or gross proceeds
of sales, taxable by each municipality shall be determined
in accordance with such legislative regulations as the tax
commissioner may prescribe. It being the intent of the
Legislature that multiple taxation of the same gross
income, or gross proceeds of sale, under the same
classification by two or more municipalities shall not be
allowed, and that gross income, or gross proceeds of sales,
derived from activity engaged in or carried on within this
state, that is presently subject to state tax under section
two-c or two-h, article thirteen, chapter eleven of this code,
which is not taxed or taxable by any other municipality of
this state, may be included in the measure of tax for any
municipality in this state, from which the activity was
directed, or in the absence thereof, the municipality in this
state in which the principal office of the taxpayer is
located. Nothing in this subsection (e) shall be construed
as permitting any municipality to tax gross income or
gross proceeds of sales in violation of the constitution and
laws of this state or the United States, or as permitting a
municipality to tax any activity that has a definite situs
outside its 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.

(g) *Administrative provisions.* — The ordinance of a
municipality imposing a business and occupation or
privilege tax shall provide procedures for the assessment
and collection of such tax, which shall be similar to those
procedures in article thirteen, chapter eleven of this code,
as in existence on June thirtieth, one thousand nine hundred seventy-eight, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor