

SB 705

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 705

(By Senators EDGELL AND HELMICK)

PASSED April 9, 2005

In Effect FROM Passage

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Senate Bill No. 705

(BY SENATORS EDGELL AND HELMICK)

[Passed April 9, 2005; in effect from passage.]

AN ACT to amend and reenact §8-13C-4, §8-13C-5 and §8-13C-6 of the Code of West Virginia, 1931, as amended, all relating to Municipal Sales and Service Tax and Municipal Use Tax; delaying the effective date of these taxes; establishing a special revenue account in the State Treasury; and making clerical and technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

That §8-13C-4, §8-13C-5 and §8-13C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS.

§8-13C-4. Municipal sales and service taxes.

- 1 (a) *Pension relief municipal sales tax.* — On and after
- 2 the first day of July, two thousand five, each qualifying

3 municipality, as defined in section two of this article, has
4 the plenary power and authority to impose, by ordinance,
5 a pension relief municipal sales and service tax at a rate
6 not to exceed one percent, subject to the provisions of this
7 article: *Provided*, That: (1) The tax does not apply to any
8 purchase of tangible personal property, custom software
9 or the results of taxable services in a transaction com-
10 pleted within the corporate limits of the municipality
11 before the first day of July, two thousand eight, or before
12 such later date specified in the ordinance of the municipal-
13 ity imposing the tax; and (2) the effective date of the tax,
14 or of a change in the rate of the tax, shall be no earlier
15 than the first day of a calendar quarter that at a minimum
16 begins one hundred eighty days after notice of the tax, or
17 of a change in the rate of tax, is provided to the Tax
18 Commissioner as provided in section six of this article.

19 (b) *Alternative municipal sales tax.* — On and after the
20 first day of July, two thousand five, notwithstanding
21 subsection (a) of this section, and in addition thereto in the
22 case of a qualifying municipality, any municipality that
23 does not impose, or ceases to impose, the business and
24 occupation or privilege tax authorized by section five,
25 article thirteen of this chapter has the plenary power and
26 authority to impose, by ordinance, an alternative municip-
27 al sales and service tax at a rate not to exceed one
28 percent, subject to the provisions of this article: *Provided*,
29 That: (1) The tax does not apply to any purchase of
30 tangible personal property, custom software or the results
31 of taxable services in a transaction completed within the
32 corporate limits of the municipality before the first day of
33 July, two thousand eight, or before such later date speci-
34 fied in the ordinance of the municipality imposing the tax;
35 and (2) the effective date of the tax, or of a change in the
36 rate of the tax, shall be no earlier than the first day of a
37 calendar quarter that at a minimum begins one hundred
38 eighty days after notice of the tax, or of a change in the
39 rate of tax, is provided to the Tax Commissioner as
40 provided in section six of this article.

41 (c) *Uniformity of tax base.* — Any municipal sales and
42 service tax imposed under the authority granted by this
43 section is subject to the following:

44 (1) The base of a municipal sales and service tax imposed
45 pursuant to this section shall be identical to the base of the
46 consumers sales and service tax imposed pursuant to
47 article fifteen, chapter eleven of this code on sales made
48 and services rendered within the boundaries of the municipi-
49 pality, subject to the following:

50 (A) Except for the exemption provided in section nine-f,
51 article fifteen, chapter eleven of this code, all exemptions
52 and exceptions from consumers sales and service tax apply
53 to a municipal sales and service tax imposed pursuant to
54 this section; and

55 (B) Sales of gasoline and special fuel are not subject to a
56 municipal sales and service tax imposed pursuant to this
57 section;

58 (2) Any municipal sales and service tax imposed pursu-
59 ant to this section applies solely to tangible personal
60 property, custom software and services that are sourced to
61 the municipality. The sourcing rules set forth in article
62 fifteen-b, chapter eleven of this code, including any
63 amendments thereto, apply to municipal sales and use
64 taxes levied pursuant to this article.

65 (d) *Notification of Tax Commissioner.* — Any municipal-
66 ity that imposes a municipal sales and service tax pursuant
67 to this section or changes the rate of a municipal sales and
68 service tax imposed pursuant to this section shall notify
69 the Tax Commissioner pursuant to section six of this
70 article.

71 (e) *State level administration required.* — Any municipi-
72 pality that imposes a municipal sales and service tax
73 pursuant to this section may not administer or collect the
74 tax, but shall use the services of the Tax Commissioner to
75 administer, enforce and collect the tax.

76 (f) *Tax in addition to state use tax.* — Any municipal
77 sales and service tax imposed pursuant to this section shall
78 be imposed in addition to the consumers sales and service
79 tax imposed pursuant to article fifteen, chapter eleven of
80 this code on sales made and services rendered within the
81 boundaries of the municipality and, except as exempted or
82 excepted, all sales made and services rendered within the
83 boundaries of the municipality shall remain subject to the
84 tax levied by that article.

85 (g) *Tax in addition to special district tax.* — Any
86 municipal sales and service tax imposed pursuant to this
87 section shall be imposed in addition to any tax imposed
88 pursuant to section one, article eighteen, chapter seven of
89 this code, sections six and seven, article thirteen of this
90 chapter and section twelve, article thirty-eight of this
91 chapter.

§8-13C-5. Municipal use tax.

1 (a) *Pension relief municipal use tax.* — On and after the
2 first day of July, two thousand five, each qualifying
3 municipality, as defined in section two of this article, that
4 imposes a pension relief municipal sales and service tax
5 pursuant to this article shall impose, by ordinance, a
6 pension relief municipal use tax at the same rate that is set
7 for the pension relief municipal sales and service tax:
8 *Provided, That:* (1) The tax does not apply to any use of
9 tangible personal property, custom software or the results
10 of taxable services in the corporate limits of the munic-
11 ipality where the first use occurs before the first day of
12 July, two thousand eight, or before such later date speci-
13 fied in the ordinance of the municipality imposing the tax;
14 and (2) the effective date of the tax, or of a change in the
15 rate of the tax, shall be no earlier than the first day of a
16 calendar quarter that at a minimum begins one hundred
17 eighty days after notice of the tax, or of a change in the
18 rate of tax, is provided to the Tax Commissioner as
19 provided in section six of this article.

20 (b) *Alternative municipal use tax.* — On and after the
21 first day of July, two thousand five, each municipality that
22 imposes an alternative municipal sales and service tax
23 pursuant to this article shall impose, by ordinance, an
24 alternative municipal use tax at the same rate that is set
25 for the alternative municipal sales and service tax:
26 *Provided, That:* (1) The tax does not apply to any use of
27 tangible personal property, custom software or the results
28 of taxable services in the corporate limits of the munici-
29 pality where the first use occurs before the first day of
30 July, two thousand eight, or before such later date speci-
31 fied in the ordinance of the municipality imposing the tax;
32 and (2) the effective date of the tax, or of a change in the
33 rate of the tax, shall be no earlier than the first day of a
34 calendar quarter that at a minimum begins one hundred
35 eighty days after notice of the tax, or of a change in the
36 rate of tax, is provided to the Tax Commissioner as
37 provided in section six of this article.

38 (c) *Uniformity of tax base.* — The base of a municipal
39 use tax imposed pursuant to this section shall be identical
40 to the base of the use tax imposed pursuant to article
41 fifteen-a, chapter eleven of this code on the use of tangible
42 personal property, custom software and taxable services
43 within the boundaries of the municipality, subject to the
44 following:

45 (1) Except for the exemption provided in section nine-f,
46 article fifteen, chapter eleven of this code, all exemptions
47 and exceptions from the use tax apply to a municipal use
48 tax imposed pursuant to this section; and

49 (2) Uses of gasoline and special fuel are not subject to a
50 municipal use tax imposed pursuant to this section when
51 the use is subject to the tax imposed by article fourteen-c,
52 chapter eleven of this code.

53 (d) *Notification to Tax Commissioner.* — Any munici-
54 pality that imposes a municipal use tax pursuant to this
55 section or changes the rate of a municipal use tax imposed

56 pursuant to this section shall notify the Tax Commissioner
57 pursuant to section six of this article.

58 (e) *State level administration required.* — Any municipi-
59 pality that imposes a municipal use tax pursuant to this
60 section may not administer or collect the tax, but shall use
61 the services of the Tax Commissioner to administer,
62 enforce and collect the taxes.

63 (f) *Tax in addition to state use tax.* — Any municipal use
64 tax imposed pursuant to this section shall be imposed in
65 addition to the use tax imposed pursuant to article fifteen-
66 a, chapter eleven of this code on the use of tangible
67 personal property, custom software or taxable services
68 within the boundaries of the municipality and, except as
69 exempted or excepted, all use of tangible personal prop-
70 erty, custom software or taxable services within the
71 boundaries of the municipality shall remain subject to the
72 tax levied by said article.

73 (g) *Tax in addition to special district tax.* — Any
74 municipal use tax imposed pursuant to this section shall
75 be imposed in addition to any tax imposed pursuant to
76 section one, article eighteen, chapter seven of this code,
77 sections six and seven, article thirteen of this chapter and
78 section twelve, article thirty-eight of this chapter.

**§8-13C-6. Notification to Tax Commissioner; responsibilities of
Tax Commissioner; fee; special revenue account;
application of state tax law.**

1 (a) *Notification to Tax Commissioner.* — Any municipal-
2 ity that imposes a municipal sales and service tax and a
3 municipal use tax pursuant to this article or changes the
4 rate of the taxes shall notify the Tax Commissioner at least
5 one hundred eighty days before the effective date of the
6 imposition of the taxes or the change in the rate of the
7 taxes.

8 (b) *State level administration of taxes.* — The Tax
9 Commissioner is responsible for administering, collecting

10 and enforcing any municipal sales and service tax and any
11 municipal use tax imposed pursuant to this article in the
12 same manner as the state consumers sales and service tax
13 imposed pursuant to article fifteen, chapter eleven of this
14 code and the state use tax imposed pursuant to article
15 fifteen-a of said chapter.

16 (c) *Fee for services.* — The Tax Commissioner may retain
17 from collections a fee not to exceed the lesser of the cost of
18 the service provided or one percent of the amount of taxes
19 imposed pursuant to this article that are collected by the
20 Tax Commissioner during any fiscal year.

21 (d) *Establishment of special revenue account.* — There
22 is created in the State Treasury a special revenue revolving
23 fund account known as the Tax Department Municipal
24 Sales and Use Tax Operations Fund, which shall be an
25 interest-bearing account. The fund shall consist of any
26 future funds received from fees charged by the Tax
27 Commissioner pursuant to this section and any funds
28 appropriated by the Legislature or transferred by any
29 public agency as contemplated or permitted by applicable
30 federal or state law; and any accrued interest or other
31 return on the moneys in the fund. The balance remaining
32 in the fund at the end of each fiscal year shall remain in
33 the fund and not revert to the state General Revenue Fund.

34 (e) *Application of state sales tax law.* — The state
35 consumers sales and service tax law, set forth in article
36 fifteen, chapter eleven of this code, and the amendments to
37 that article and the rules of the Tax Commissioner relating
38 to the laws shall apply to a municipal sales and service tax
39 imposed pursuant to this article to the extent the rules and
40 laws are applicable.

41 (f) *Application of state use tax law.* — The state use tax
42 law, set forth in article fifteen-a, chapter eleven of this
43 code, and the amendments to that article and the rules of
44 the Tax Commissioner relating to the laws shall apply to

45 a municipal use tax imposed pursuant to this article to the
46 extent the rules and laws are applicable.

47 (g) *Definitions incorporated.* — Any term used in this
48 article or in an ordinance adopted pursuant to this article
49 that is defined in articles fifteen, fifteen-a and fifteen-b,
50 chapter eleven of this code, as amended, shall have the
51 same meaning when used in this article or in an ordinance
52 adopted pursuant to this article, unless the context in
53 which the term is used clearly requires a different result.

54 (h) *Automatic updating.* — Any amendments to articles
55 nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of
56 this code shall automatically apply to a sales or use tax
57 imposed pursuant to this article, to the extent applicable.

58 (i) *Administrative procedures.* — Each and every
59 provision of the West Virginia Tax Procedure and Admin-
60 istration Act set forth in article ten, chapter eleven of this
61 code applies to the taxes imposed pursuant to this article,
62 except as otherwise expressly provided in this article, with
63 like effect as if that act were applicable only to the taxes
64 imposed by this article and were set forth in extenso in
65 this article.

66 (j) *Criminal penalties.* — Each and every provision of
67 the West Virginia Tax Crimes and Penalties Act set forth
68 in article nine, chapter eleven of this code applies to the
69 taxes imposed pursuant to this article with like effect as if
70 that act were applicable only to the taxes imposed pursu-
71 ant to this article and were set forth in extenso in this
72 article.

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

Clardy White
.....
Chairman Senate Committee

D. Richard Brown
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Adams
.....
Clerk of the Senate

Bruce S. Day
.....
Clerk of the House of Delegates

Carl Roy Tomlin
.....
President of the Senate

Robert A. J. S.
.....
Speaker House of Delegates

The within *is approved* this the *28th*
April Day of 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 20 2005

Time 3:00 pm