WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 705

(By Senators Edgar and Hemmick)

PASSED April 9, 2005

In Effect from Passage
ENROLLED

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

(b) Alternative municipal sales tax. — On and after the
first day of July, two thousand five, notwithstanding
subsection (a) of this section, and in addition thereto in the
case of a qualifying municipality, any municipality that
does not impose, or ceases to impose, the business and
occupation or privilege tax authorized by section five,
article thirteen of this chapter has the plenary power and
authority to impose, by ordinance, an alternative munici-
pal sales and service tax at a rate not to exceed one
percent, subject to the provisions of this article: Provided,
That: (1) The tax does not apply to any purchase of
tangible personal property, custom software or the results
of taxable services in a transaction completed within the
corporate limits of the municipality before the first day of
July, two thousand eight, or before such later date speci-
fied in the ordinance of the municipality imposing the tax;
and (2) the effective date of the tax, or of a change in the
rate of the tax, shall be no earlier than the first day of a
calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.
(c) Uniformity of tax base. — Any municipal sales and service tax imposed under the authority granted by this section is subject to the following:

(1) The base of a municipal sales and service tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the municipality, subject to the following:

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

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

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

(d) Notification of Tax Commissioner. — Any municipality that imposes a municipal sales and service tax pursuant to this section or changes the rate of a municipal sales and service tax imposed pursuant to this section shall notify the Tax Commissioner pursuant to section six of this article.

(e) State level administration required. — Any municipality that imposes a municipal sales and service tax pursuant to this section may not administer or collect the tax, but shall use the services of the Tax Commissioner to administer, enforce and collect the tax.
(f) Tax in addition to state use tax. — Any municipal sales and service tax imposed pursuant to this section shall be imposed in addition to the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the municipality and, except as exempted or excepted, all sales made and services rendered within the boundaries of the municipality shall remain subject to the tax levied by that article.

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

§8-13C-5. Municipal use tax.

(a) Pension relief municipal use tax. — On and after the first day of July, two thousand five, each qualifying municipality, as defined in section two of this article, that imposes a pension relief municipal sales and service tax pursuant to this article shall impose, by ordinance, a pension relief municipal use tax at the same rate that is set for the pension relief municipal sales and service tax: Provided, That: (1) The tax does not apply to any use of tangible personal property, custom software or the results of taxable services in the corporate limits of the municipality where the first use occurs before the first day of July, two thousand eight, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.
(b) Alternative municipal use tax. — On and after the first day of July, two thousand five, each municipality that imposes an alternative municipal sales and service tax pursuant to this article shall impose, by ordinance, an alternative municipal use tax at the same rate that is set for the alternative municipal sales and service tax: Provided, That: (1) The tax does not apply to any use of tangible personal property, custom software or the results of taxable services in the corporate limits of the municipality where the first use occurs before the first day of July, two thousand eight, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

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

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

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

(d) Notification to Tax Commissioner. — Any municipality that imposes a municipal use tax pursuant to this section or changes the rate of a municipal use tax imposed
Enr. S. B. No. 705] 6

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

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

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

(g) Tax in addition to special district tax. — Any
municipal use tax imposed pursuant to this section shall
be imposed in addition to any tax imposed pursuant to
section one, article eighteen, chapter seven of this code,
sections six and seven, article thirteen of this chapter and
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-
ity that imposes a municipal sales and service tax and a
municipal use tax pursuant to this article or changes the
rate of the taxes shall notify the Tax Commissioner at least
one hundred eighty days before the effective date of the
imposition of the taxes or the change in the rate of the
taxes.

2 (b) State level administration of taxes. — The Tax
Commissioner is responsible for administering, collecting
and enforcing any municipal sales and service tax and any
municipal use tax imposed pursuant to this article in the
same manner as the state consumers sales and service tax
imposed pursuant to article fifteen, chapter eleven of this
code and the state use tax imposed pursuant to article
fifteen-a of said chapter.

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

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

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

(f) Application of state use tax law. — The state use tax
law, set forth in article fifteen-a, chapter eleven of this
code, and the amendments to that article and the rules of
the Tax Commissioner relating to the laws shall apply to
a municipal use tax imposed pursuant to this article to the extent the rules and laws are applicable.

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

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

(i) Administrative procedures. — Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code applies to the taxes imposed pursuant to this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

(j) Criminal penalties. — Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code applies to the taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor