

# 2001 SESSION

INTRODUCED

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## SENATE BILL NO. 832

Offered January 10, 2001

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*A BILL to amend and reenact §§ 58.1-3812 and 58.1-3813.1 of the Code of Virginia, relating to exemptions for telephone service and enhanced 911 service taxes.*

Patron—Hawkins

Referred to Committee on Finance

### Be it enacted by the General Assembly of Virginia:

**1. That §§ 58.1-3812 and 58.1-3813.1 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-3812. Telegraph and telephone companies.

A. Subject to the limitations contained in subsection C, any county, city or town may impose a tax on a taxable purchase by a consumer of local telecommunication service if the consumer's service address is located in such county, city or town. Except as otherwise provided, the tax shall not be imposed at a rate in excess of twenty percent of the monthly gross charge to a consumer and shall not be applicable to any amount so charged in excess of fifteen dollars per month for a residential consumer; however, any county, city or town that on July 1, 1972, imposed a tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. Notwithstanding the foregoing, the tax may be imposed only at a rate equal to ten percent of the monthly gross charge to a consumer of mobile local telecommunication and shall not be applicable to any amount so charged in excess of thirty dollars per month for each mobile service consumer. No county, city or town that currently is not collecting the tax on mobile local telecommunication service shall begin to collect the tax on mobile local telecommunication service before September 1, 1994, for bills sent to consumers on and after that date. However, any county with a population of at least 68,000 but not more than 69,000, any city with a population of at least 40,000 but not more than 41,000, and any city with a population of at least 66,000 but not more than 67,000 shall conform with the provisions of this section in accordance with the following schedule:

Fiscal Year	Rate	Cap
1994-95	10%	None
1995-96	10%	\$100
1996-97	10%	\$50
July 1, 1997		
and thereafter		Full Conformity

B. Any tax enacted pursuant to the provisions of this section or any change in a tax or structure already in existence shall not be effective until 120 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, being received by the registered agent of the service provider that is required to collect the tax.

C. No county shall impose a tax hereunder within the limits of any incorporated town located within such county when such town constitutes a separate school district and such town imposes a town tax authorized by this section. No county shall impose a tax hereunder within the limits of any incorporated town located within such county when such town has enacted an ordinance on or before January 1, 2000, to impose a tax hereunder and such ordinance remains in effect. Except as provided in this subsection, no town shall impose a tax hereunder if the county within which such town is located imposes a county tax authorized by this section.

D. Any county, city or town may provide for an exemption from the tax for any public safety answering point as defined in § 58.1-3813.1; *however, no county, city or town shall impose such tax on volunteer rescue squads and volunteer fire departments, and the county, city or town shall provide the telephone account numbers of all exempted volunteer rescue squads and volunteer fire departments to all service providers required to collect the tax as part of the notice required pursuant to subsection B.*

E. Any city with a population of not less than 27,000 and not more than 28,500 may provide an exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4 (§ 58.1-3650 et seq.) of Chapter 36. Any city providing such exemption shall provide the telephone account numbers of all exempted churches and religious bodies to all service providers required to collect the tax as part of the notice required pursuant to subsection B.

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58 F. A service provider of local telecommunication services shall collect the tax from the consumer by  
59 adding the tax to the monthly gross charge for such services. The tax shall, when collected, be stated as  
60 a distinct item separate and apart from the monthly gross charge. Until the consumer pays the tax to the  
61 service provider, the tax shall constitute a debt of the consumer to the county, city or town. If any  
62 consumer refuses to pay the tax, the service provider shall notify the county, city or town. After the  
63 consumer pays the tax to the service provider, the taxes collected shall be deemed to be held in trust by  
64 the service provider until remitted to the county, city or town.

65 G. A service provider shall remit monthly to each county, city or town the amount of tax billed  
66 during the preceding month to consumers with a service address in that county, city or town, less any  
67 discount allowed under § 58.1-3816.1.

68 H. No county, city or town may impose the tax on consumers of mobile local telecommunication  
69 service unless it also imposes the tax on the consumers of the other forms of local telecommunication  
70 services.

71 I. Any consumer shall be entitled to a refund from the county, city or town imposing the tax equal to  
72 the amount of any tax the consumer paid to a jurisdiction outside of the Commonwealth if such tax was  
73 legally imposed in such other jurisdiction; however, the amount of credit or refund shall not exceed the  
74 tax paid to the county, city or town on such purchase.

75 J. As used in this article, unless the context clearly requires otherwise:

76 "Affiliated group" shall have the same meaning ascribed to it in subdivision C 10 of § 58.1-3703,  
77 except, for purposes of this article, the word "entity" shall be substituted for the word "corporation"  
78 whenever it is used in that section.

79 "Bad debts" means any portion of a debt related to a sale of local telecommunication services, the  
80 gross charges for which are not otherwise deductible or excludable, that has become worthless or  
81 uncollectible, as determined under applicable federal income tax standards. If the portion of the debt  
82 deemed to be bad is subsequently paid, the service provider shall report and pay the tax on that portion  
83 during the reporting period in which the payment is made.

84 "Consumer" means a person who, individually or through agents, employees, officers, representatives,  
85 or permittees, makes a taxable purchase of local telecommunication services.

86 "Enhanced services" means services that employ computer processing applications to act on the  
87 format, code, or protocol or similar aspects of the information transmitted; provide additional, different,  
88 or restructured information; or involve interaction with stored information.

89 "Gross charges" means, subject to the exclusions of this section, the amount charged or paid for the  
90 taxable purchase of local telecommunication services. However, "gross charges" shall not include the  
91 following:

92 1. Charges or amounts paid that vary based on the distance and/or elapsed transmission time of the  
93 communication that are separately stated on the consumer's bill or invoice.

94 2. Charges or amounts paid for customer equipment, including such equipment that is leased or  
95 rented by the customer from any source, if such charges or amounts paid are separately identifiable from  
96 other amounts charged or paid for the provision of local telecommunication services on the service  
97 provider's books and records.

98 3. Charges or amounts paid for administrative services, including, without limitation, service  
99 connection and reconnection, late payments, and roamer daily surcharges.

100 4. Charges or amounts paid for special features that are not subject to taxation under § 4251 of the  
101 Internal Revenue Code of 1986, as amended.

102 5. Charges or amounts paid that are (i) the tax imposed by § 4251 of the Internal Revenue Code of  
103 1986, as amended or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory  
104 authority.

105 6. Bad debts.

106 "Local telecommunication service," subject to the exclusions stated in this section, includes, without  
107 limitation, the two-way local transmission of messages through use of switched local telephone services;  
108 telegraph services; teletypewriter; local cellular mobile radio telecommunication services; specialized  
109 mobile radio; stationary two-way radio; or any other form of two-way mobile and portable  
110 communications.

111 "Local telephone service," subject to the exclusions stated in this section, includes any service subject  
112 to federal taxation as local telephone service as that term is defined in § 4252 of the Internal Revenue  
113 Code of 1986, as amended, or any successor statute.

114 "Mobile local telecommunication service" means any two-way mobile or portable local  
115 telecommunication service, including cellular mobile radio telecommunication service and specialized  
116 mobile radio.

117 "Mobile service consumer" means a person having a telephone number for mobile local  
118 telecommunication service who has made a taxable purchase of such service or on whose behalf another  
119 person has made a taxable purchase of such service.

"Mobile service provider" means every person engaged in the business of selling mobile local telecommunication services to consumers.

"Residential consumer" shall not include any consumer of mobile local telecommunication service.

"Service address" means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a consumer. However, if the service address is not a defined location, as in the case of mobile telephones, maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment within the licensed service area. A mobile service provider may obtain a signed statement from a consumer indicating which county, city or town within the licensed service area is the location of the consumer's primary use of the telecommunication equipment. A mobile service provider shall be entitled to rely absolutely on a consumer's signed statement and shall remit the taxes collected to the county, city or town identified by the consumer. In the absence of a signed statement by a consumer, a mobile service provider shall identify the county, city or town of the consumer's primary use and shall remit the tax to such county, city or town based on any other reasonable method, including, without limitation, the consumer's billing address, service address, or telephone number within the licensed service area.

"Service provider" means every person engaged in the business of selling local telecommunication services to consumers.

"Taxable purchase" means the acquisition of telecommunication services for consumption or use; however, taxable purchase does not include (i) the provision of telecommunications among members of an affiliated group of entities by a member of the group for their own exclusive use and consumption and (ii) the purchase of telecommunications for resale in the subsequent provision of telecommunications, including, without limitation, carrier access charges, right of access charges, and charges for use of intercompany facilities; however, the acquisition of telecommunications by a provider of enhanced services is not the purchase of telecommunications for resale, even when the cost of the telecommunications is separately stated to the purchaser of the enhanced services, as long as the primary object of the purchase of the telecommunications by the provider is for the provision of enhanced services and not telecommunications. A person may make tax-free purchases of telecommunications for resale if the person provides to the service provider a sworn affidavit indicating that the person's purchases are nontaxable sales for resale.

§ 58.1-3813.1. Local tax for enhanced 911 service; definitions.

A. As used in this section and § 58.1-3813.2, unless context requires a different meaning:

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Board" means the Wireless E-911 Services Board established pursuant to § 56-484.13.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a twenty-four-hour basis to receive and process 911 calls.

B. Any county, city or town which has, singly or by joint agreement, established or will establish an enhanced 911 service may impose a special tax on the consumers of the telephone service or services provided by any corporation subject to the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, not to exceed a monthly fee of three dollars. However, no such tax shall be imposed on federal, state and local government agencies *or volunteer rescue squads and volunteer fire departments*. Such tax shall be subject to the notification and jurisdictional provisions of § 58.1-3812.

C. The governing body of any county, city or town may exempt from payment of the tax any subscriber to individual telephone service who resides in a nursing home or similar adult care facility.

D. Prior to imposing such tax, the governing body of any city, town or county shall find that an enhanced 911 service, as defined in subsection A, has been or will be installed in its respective locality and that the telephone company has central office equipment which will permit such system to be established.

E. For the purpose of compensating a telephone utility for accounting for and remitting the tax levied

181 by this section, such telephone utility shall be allowed three percent of the amount of tax due and  
182 accounted for in the form of a deduction in submitting the return and paying the amount due by it.

183 F. Any such taxes imposed by this section shall be accounted for in a separate special revenue fund  
184 or accounted for using a cost center and revenue accounting system acceptable to the Auditor of Public  
185 Accounts. The locality shall report revenues, expenditures, and balances of the E-911 special revenue  
186 fund or cost center in accordance with the specifications set forth in section § 15.2-2510. Amounts  
187 collected from the tax shall be used solely to pay for reasonable, direct recurring and nonrecurring  
188 capital costs, and operating expenses incurred by a public safety answering point in designing,  
189 upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining  
190 all necessary data, hardware and software required to receive and process emergency telephone calls  
191 through an E-911 system, including salaries and fringe benefits of dispatchers and direct call-takers of  
192 an E-911 system and costs incurred in training dispatchers and direct call-takers in receiving and  
193 dispatching emergency telephone calls, and the salary and fringe benefits of the public safety answering  
194 point director or coordinator so long as such person has no other duties other than the responsibility for  
195 the public safety answering point.

196 G. Localities shall ensure that the audit contract with their independent certified public accountant  
197 includes audit procedures, in accordance with the specifications set forth in § 15.2-2511, of the separate  
198 special revenue fund or cost center required to be established for receiving and accounting for amounts  
199 collected under the tax authorized by this section. The specifications shall require an annual audit,  
200 beginning July 1, 2000, of such fund or cost center so as to ensure that the amounts collected from such  
201 tax are expended solely to pay wireline PSAP cost as defined in this article. The independent certified  
202 public accountants shall report any findings to the Auditor of Public Accounts by November 30  
203 following the fiscal year end. The Auditor of Public Accounts shall summarize findings from all  
204 localities and report those findings annually to the Governor, the Senate Committee on Finance and the  
205 House Committee on Appropriations, and the Virginia State Crime Commission by February 1 of the  
206 next year.