

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 502

An Act to amend and reenact §§ 58.1-2628, 58.1-2629, 58.1-2630, 58.1-2631, 58.1-2640, and 58.1-2901 of the Code of Virginia and to repeal § 58.1-2605 of the Code of Virginia, relating to taxation of public service corporations; license taxes; electric utility consumption tax.

[S 255]

Approved April 5, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2628, 58.1-2629, 58.1-2630, 58.1-2631, 58.1-2640, and 58.1-2901 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2628. Annual report.

A. Each telegraph company and telephone company shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, owned, operated or used by it, except leased automobiles, leased trucks or leased real estate, as of January 1 preceding, showing particularly the county, city, town or magisterial district wherein such property is located.

The report shall also show the total gross receipts for the twelve months ending December 31 next preceding and the interstate revenue, if any, attributable to the Commonwealth. Such revenue shall include all interstate revenue from business originating and terminating within the Commonwealth and a proportion of interstate revenue from all interstate business passing through, into or out of the Commonwealth.

B. Every corporation doing in the Commonwealth the business of furnishing water, heat, light and power, whether by means of gas or steam, except (i) pipeline transmission companies taxed pursuant to § 58.1-2627.1 or (ii) an electric supplier as defined in § 58.1-400.2, shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to it as of January 1 preceding, showing particularly, as to property owned by it, the county, city, town or magisterial district wherein such property is located. The report shall also show the total gross receipts for the twelve months ending December 31 next preceding.

C. Every corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to such corporation, *leased by such corporation for a term greater than one year, or operated by such corporation* as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located, *unless owned and reported to the Commission by another corporation or electric supplier in the Commonwealth in the business of furnishing heat, light and power by means of electricity.*

D. Every electric supplier shall report annually, on April 15, to the Commission all real and tangible personal property owned *by such electric supplier, leased by such electric supplier for a term greater than one year, or operated by such electric supplier* in the Commonwealth and used directly for the generation, transmission or distribution of electricity for sale as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located, *unless owned and reported to the Commission by another corporation or electric supplier in the Commonwealth in the business of furnishing heat, light and power by means of electricity.*

E. Every pipeline transmission company shall report annually, on April 15, to the Department all of its real and tangible personal property of every description as of the beginning of January 1 preceding, showing particularly in what city, town or county and magisterial district therein the property is located.

F. The report required by subsections A through E shall be completed on forms prepared and furnished by the Commission. The Commission shall include on such forms such information as the Commission deems necessary for the proper administration of this chapter.

G. The report required by this section shall be certified by the oath of the president or other designated official of the corporation or person.

§ 58.1-2629. License taxes of corporations commencing business.

A. Companies or persons otherwise taxable under § 58.1-2626 ~~or § 58.1-2627.1~~ but ~~which~~ *that* begin business on or after the beginning of the tax year shall pay a license tax, the measure of which shall be an estimate of the gross receipts of such company or person for the year or for that part of the year in which it begins business. Such estimate shall be reported to the Commission on forms furnished by the Commission within thirty days after beginning business and the license tax measured thereby and assessed by the Commission shall be paid into the state treasury within thirty days after such assessment is made or by June 1 of the year if such assessment is made more than thirty days prior to June 1.

B. Any company or person subject to the provisions of subsection A shall, for the immediately

following tax year, pay the license tax measured by an estimate of the gross receipts for the year beginning January 1 of the year following the year in which it began business. Such estimate of gross receipts shall be reported to the Commission within the time requirements prescribed by § 58.1-2628.

C. Every estimate made under this section shall be subject to review by the Commission after the close of the year for which such estimate is made and any variance between the estimate and the actual gross receipts shall be adjusted by the Commission by order of refund or the assessment of additional license tax depending upon whether such estimate was in excess of or less than the actual gross receipts of such taxpayer for such year.

§ 58.1-2630. Gross receipts in cases of acquisition of business.

A. Any taxpayer liable for a license tax required by this chapter ~~who~~ *or liable for the special regulatory revenue tax required by Article 6 (§ 58.1-2660 et seq.) of this chapter* that acquires, by purchase or otherwise, the business or any part thereof of another ~~corporation taxpayer~~ also liable for such ~~tax taxes~~ but which would not be otherwise subject to the ~~tax taxes~~ following such sale or disposition shall, for the purpose of determining the amount of its ~~license tax taxes~~ for the year following the year in which such business was so acquired, include as a part of its gross receipts for the taxable years, the gross receipts of the business so acquired for that portion of the taxable year as such business was not operated by the acquiring ~~corporation taxpayer~~.

B. The provisions of subsection A shall not apply to any ~~corporation taxpayer~~ whose license tax for the year involved is measured by an estimate of gross receipts for such year as prescribed in § 58.1-2629.

§ 58.1-2631. Gross receipts in cases of consolidation or merger.

Whenever there is a consolidation or merger of corporations taxable under § 58.1-2626 ~~or § 58.1-2627.1~~ *or taxable under Article 6 (§ 58.1-2660 et seq.) of this chapter*, liability for the ~~license tax imposed by this chapter taxes~~ shall attach to the corporation thus formed and the gross receipts which shall be used for measuring the license tax *or special regulatory revenue tax* of the corporation thus formed shall include the gross receipts of the corporations which were consolidated or merged.

§ 58.1-2640. Declarations of estimated tax required; contents, etc.

A. Every taxpayer ~~which~~ *that* is subject to a state license tax imposed by § 58.1-2626 ~~or § 58.1-2627.1~~ shall make a declaration of estimated tax for the taxable year if the tax imposed by this chapter, for the tax year, can reasonably be expected to exceed \$500 *\$5,000*.

Such declaration shall contain such pertinent information as the Commission may by forms or regulations prescribe.

B. A taxpayer with a taxable year of less than twelve months shall make a declaration in accordance with regulations prescribed by the Commission.

§ 58.1-2901. Collection and remittance of tax.

A. The provider of billing services shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt of the consumer to the Commonwealth, localities, and the State Corporation Commission. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed by § 58.1-2900, the provider of billing services shall notify the State Corporation Commission of the name and address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services including the tax that is imposed by § 58.1-2900, the provider of billing services shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the State Corporation Commission and the appropriate locality. After the consumer pays the tax to the provider of billing services, the taxes collected shall be deemed to be held in trust by such provider until remitted to the State Corporation Commission and the appropriate locality.

When determining the amount of tax to collect from consumers of an electric utility that is a cooperative which purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments during such taxable period to the Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be calculated on the basis of such federal entity's gross proceeds from the sale of electricity, the provider of billing services shall deduct from each of the respective tax amounts calculated in accordance with § 58.1-2900 an amount equal to the calculated tax amounts multiplied by the ratio that the total cost of the power, including facilities rental, supplied by said federal entity to said cooperative for resale within the Commonwealth bears to said cooperative's total operating revenue within the Commonwealth for the taxable period. The State Corporation Commission may audit the records and books of said cooperative to verify that the tax imposed by this chapter has been correctly determined and properly remitted.

B. A provider of billing services shall remit monthly to the Commission the amount of tax paid during the preceding month by the provider of billing services' consumers, except for (i) amounts added on the bills to utilities owned and operated by municipalities which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), which they shall remit directly to the Commission and (ii) the portion which represents the

local consumption tax, which portion shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed. Amounts of the tax that are added on the bills to utilities owned and operated by municipalities, which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), shall be remitted monthly by such entity to the Commission, except that the portion which represents the local consumption tax shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed.

C. The electric utility consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the electric utility consumption tax that relate to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the localities. Failure to remit timely will result in a ten percent penalty.

D. Taxes on electricity sales in the year ending December 31, 2000, relating to the local license tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.

E. For purposes of this section, "service provider" means the person who delivers electricity to the consumer and "provider of billing services" means the person who bills a consumer for electric services rendered. If both the service provider and another person separately and directly bill a consumer for electricity service, then the service provider shall be considered the "provider of billing services."

F. The portion of the electric utility consumption tax relating to the local consumption tax replaces and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business, professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) on electric suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate imposed by a locality is less than the equivalent of the local consumption tax rate component of the consumption tax paid under subsection A of § 58.1-2900, the excess collected by the Commission shall constitute additional state consumption tax revenue and shall be remitted by the Commission to the state treasury.

G. The Department of Taxation may audit the books and records of any electric utility owned and operated by a municipality (or an association or agency of which the municipality is a member) to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

H. The State Corporation Commission may audit the books and records of any service provider or provider of billing services, except as provided in subsection G, to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

2. That § 58.1-2605 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on January 1, 2003.