

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 172

An Act to amend and reenact § 58.1-3812 of the Code of Virginia, relating to local consumer utility tax.

[S 316]

Approved March 19, 2004

Be it enacted by the General Assembly of Virginia:

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

§ 58.1-3812. Telegraph and telephone companies.

A. Subject to the limitations contained in subsections C and K, 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 20 percent of the monthly gross charge to a consumer and shall not be applicable to any amount so charged in excess of \$15 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 10 percent of the monthly gross charge to a consumer of local mobile telecommunications service and shall not be applicable to any amount so charged in excess of \$30 per month for each mobile telecommunications service number billed to a mobile service consumer. No county, city or town that currently is not collecting the tax on local mobile telecommunications service shall begin to collect the tax on local mobile telecommunications 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. 1. Notwithstanding the limitations in subsection C, on or after July 1, 2002, the local governing body of the Town of Orange may enact an ordinance to impose the tax hereunder. At the time such ordinance is enacted, Orange County shall no longer impose the tax within the limits of the Town of Orange *while such ordinance remains in effect*.

2. Notwithstanding the limitations in subsection C, on or after July 1, 2003, the local governing bodies of the Towns of Gordonsville, Colonial Beach and Montross may enact an ordinance to impose the tax hereunder. At the time such ordinance is enacted by the governing body of the Town of Gordonsville, Orange County shall no longer impose the tax within the limits of the Town of Gordonsville *while such ordinance remains in effect*. At the time such ordinance is enacted by the Town of Colonial Beach or the Town of Montross, Westmoreland County shall no longer impose the tax within the limits of the town enacting such ordinance *while such town ordinance remains in effect*.

3. Notwithstanding the limitations in subsection C, on or after July 1, 2004, the local governing bodies of the Towns of Herndon and Vienna may enact an ordinance to impose the tax hereunder. At the time such ordinance is enacted by the Town of Herndon or the Town of Vienna, Fairfax County shall no longer impose the tax within the limits of the town enacting such ordinance *while such town*

ordinance remains in effect.

E. 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.

F. 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.

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

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

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

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

K. 1. The federal Mobile Telecommunications Sourcing Act (4 U.S.C. § 116 et seq., as amended) created a uniform methodology for sourcing of mobile telecommunications services subject to state and local taxes, fees, and charges. It is the intent of the General Assembly that state and local taxes, fees, and charges on mobile telecommunications service be imposed in accordance with federal law.

2. Mobile telecommunications service provided to a customer and billed by or for the customer's home service provider shall be deemed to be provided by the home service provider at the customer's place of primary use. Subject to the exclusions in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116 (c), as amended, local mobile telecommunications service taxable under subsection A shall be taxable in the jurisdiction whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. No mobile telecommunications service shall be taxable in this Commonwealth or any jurisdiction in this Commonwealth if the customer's place of primary use is outside this Commonwealth.

3. When otherwise taxable and non-taxable charges for mobile telecommunications service are aggregated, the charges for nontaxable mobile telecommunications service shall be subject to taxation, unless the home service provider can reasonably identify charges not subject to taxation from its books and records that are kept in the regular course of business.

4. The Tax Commissioner may provide a home service provider with an electronic database that meets the requirements of 4 U.S.C. § 119, as amended. If such database is provided, a home service provider shall be held harmless from any tax, charge, or fee liability for errors of omissions due solely to the reliance on such database, subject to 4 U.S.C. §§ 119 and 121, as amended. If no electronic database is provided by the Tax Commissioner, a home service provider may use an enhanced zip code to assign each street address to a specific taxing jurisdiction, and the home service provider shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction, subject to 4 U.S.C. §§ 120 and 121, as amended.

5. The Tax Commissioner shall require a home service provider to obtain and maintain a customer's place of primary use and the local assessing officer shall allow the home service provider to rely on this address as provided under 4 U.S.C. § 122, as amended. The Tax Commissioner may correct the place of primary use, or correct the assignment of a taxing jurisdiction by a home service provider, in accordance with 4 U.S.C. § 121, as amended.

6. Nothing in this subsection modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

7. If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within 60 days of receiving a notice under

this section, the home service provider shall review its records to determine the customer's taxing jurisdiction. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges, and/or fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

8. For the purposes of this subsection, the terms "customer," "enhanced zip code," "home service provider," "licensed service area," "serving carrier," and "taxing jurisdiction" shall have the meaning attributed to them by the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

L. 1. For purposes of this article, a bundled transaction of services includes services taxed under this section and consists of distinct and identifiable properties, services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different.

2. In the case of a bundled transaction described in subdivision L 1, if the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services shall be subject to tax unless the provider can reasonably identify such nontaxable portion from its books and records kept in the regular course of business.

3. In the case of a bundled transaction described in subdivision L 1, if the charge for such services is attributable to services that are subject to tax at different rates, the total charge shall be treated as attributable to the services subject to tax at the highest rate unless the provider can reasonably identify the portion of the charge attributable to the services subject to tax at a lower rate from its books and records kept in the regular course of business for other purposes.

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

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

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

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

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

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

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

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

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

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

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

6. Bad debts.

"Local telecommunication service," subject to the exclusions stated in this section, includes, without limitation, the two-way local transmission of messages through use of switched local telephone services; telegraph services; teletypewriter; or local mobile telecommunications service.

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

"Mobile service consumer" means a person having a telephone number for local mobile

telecommunications service who has made a taxable purchase of such service or on whose behalf another person has made a taxable purchase of such service.

"Mobile telecommunications service" means commercial mobile radio service, as defined in 47 C.F.R. § 20.3, as in effect on June 1, 1999.

"Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.

"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 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. In the case of mobile telecommunications service, service address shall mean the customer's place of primary use.

"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.