

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 811

An Act to amend and reenact § 58.1-648 of the Code of Virginia, relating to communications sales and use tax exemptions; emergency.

[H 2723]

Approved March 23, 2007

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-648 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-648. Imposition of sales tax; exemptions.

A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of 5% of the sales price of each communications service that is sourced to the Commonwealth in accordance with § 58.1-649.

B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99; (vi) a communications services provider's internal use of communications services in connection with its business of providing communications services; (vii) charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; (viii) sales for resale; ~~and~~ (ix) charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government; *and (x) charges for communications services to any customers on any federal military bases or installations when a franchise fee or similar fee for access is payable to the federal government, or any agency or instrumentality thereof, with respect to the same communications services.*

C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions of this chapter.

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act shall be effective retroactively to January 1, 2007.

4. That the Department of Taxation is hereby authorized to develop and implement a plan to reimburse to communications services providers who have refunded the communications sales and use taxes paid after January 1, 2007, but prior to the enactment of this act, by customers on any federal military bases or installations who have also paid franchise fees or similar fees to the federal government for communications services.