

LD4863256

HOUSE BILL NO. 2115

Offered January 23, 1995

A BILL to amend and reenact § 58.1-2690 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 38 of Title 58.1 an article numbered 5.1, consisting of sections numbered 58.1-3818.1 through 58.1-3818.7, relating to video programming excise tax.

Patrons—Guest and Cranwell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2690 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 38 of Title 58.1 an article numbered 5.1, consisting of sections numbered 58.1-3818.1 through 58.1-3818.7, as follows:

§ 58.1-2690. No state or local tax on intangible personal property or money; local levies and license taxes.

A. Except as provided in this chapter, there shall be no state or local taxes assessed on the intangible personal property, gross receipts or other such money or income owned by telephone or telegraph companies, railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam.

B. On the real estate and tangible personal property of every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in Virginia and of railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam, there shall be local levies at the rates prescribed by § 58.1-2606.

C. Notwithstanding the provisions of subsection A, any city, town or county may impose a license tax under § 58.1-3703 upon a corporation owning or operating telegraph or telephone lines in Virginia for the privilege of doing business therein, which shall not exceed one-half of one percent of the gross receipts of such business accruing to such corporation from such business in such city, town or county; however, charges for long distance telephone calls shall not be considered receipts of business in such city, town or county.

D. Notwithstanding the provisions of subsection A, any city, town or county may impose an excise tax under § 58.1-3818.3 upon a corporation owning or operating telegraph or telephone lines in Virginia, at a rate that shall not exceed the rate lawfully imposed by § 58.1-3818.3, on such corporation's gross receipts from sales of video programming or access to video programming directly to end-user subscribers who are located within such city, town or county.

Article 5.1

Video Programming Excise Tax.

§ 58.1-3818.1. Title.

This article shall be known and may be cited as the "Video Programming Excise Tax Act."

§ 58.1-3818.2. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Cable operator" means any person or group of persons (i) that provides cable service over a cable system and directly or through one or more affiliates owns an interest in such cable system or (ii) that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

"End-user subscriber" means the ultimate consumer of the video programming provided by video programmers over any means of transmission. End-user subscriber does not include a video programmer that purchases a common carrier's video dialtone transport service to provide video programming over the common carrier's video dialtone system.

"Gross receipts" means the amount charged for or received by (i) video programmers from sales of video programming and (ii) persons from sales of access to a video network, by any means of transmission, directly to end-user subscribers with service addresses in the local jurisdiction. Gross receipts shall not include: (i) amounts charged for or received by persons from sales of telephone access or service that entitles the subscriber to the privilege of interactive telephonic quality telecommunications with substantially all persons having telephone or radio telephone stations constituting a part of a particular system or in a specified area; (ii) the excise tax imposed pursuant to this section if the tax is shown as a separate line charge to end-user subscribers; (iii) any other taxes, fees or surcharges on services furnished by common carriers or video programmers which are imposed

INTRODUCED

HB2115

60 on subscribers by the Commonwealth, counties, cities or towns pursuant to statute, ordinance, resolution
61 or regulation and which are collected on behalf of said governmental unit by the provider of the
62 services; or (iv) any portion of a debt related to the sale of video programming or the sale of access to
63 a video network, the gross charges for which are not otherwise deductible or excludable, that have
64 become worthless or uncollectible, as determined under applicable federal income tax standards. If the
65 portion of the debt deemed to be bad is subsequently paid, the video programmer or person shall report
66 and pay the excise tax on that portion during the reporting period in which the payment is made.

67 "Local jurisdiction" means a city, town or county located in Virginia.

68 "Person" means an individual, partnership, association, joint stock company, trust, corporation,
69 governmental entity, limited liability company, or any other entity.

70 "Video dialtone service" means a common carrier service for the transport of video programming to
71 end-user subscribers.

72 "Video programmer" means an individual, partnership, association, joint stock company, trust,
73 corporation, governmental entity, limited liability company, or any other entity that sells video
74 programming to end-user subscribers.

75 "Video programming" means video and/or information programming provided by, or generally
76 considered comparable to programming provided by, a cable operator.

77 § 58.1-3818.3. Imposition of excise tax on gross receipts of video programming providers.

78 A. The governing body of any county, city or town may levy a video programming excise tax on any
79 person that sells video programming to end-user subscribers located within the Commonwealth by any
80 means of transmission or provides such end-user subscribers with access to video programming by any
81 means of transmission, with or without the use of wires, and that is not otherwise subject to local fees
82 or taxes (other than generally applicable taxes) on the gross receipts received from the provision of
83 cable service or video programming services to customers in such local jurisdiction. Such excise tax
84 shall be imposed on persons engaging in any commercial activity in the Commonwealth, employing
85 capital in the Commonwealth, owning, leasing or utilizing property in the Commonwealth, maintaining
86 an office in the Commonwealth, or having employees in the Commonwealth for all or any part of any
87 calendar year. The excise tax imposed by each local jurisdiction may be imposed only on the gross
88 receipts of such persons from sales of video programming or sales of access to video programming
89 directly to end-user subscribers that are located within the particular local jurisdiction. The amount of
90 excise tax that each local jurisdiction is authorized to collect from any person subject to tax pursuant to
91 this section shall be determined by (i) multiplying the franchise fee rate lawfully imposed by the local
92 cable ordinance of each such local jurisdiction or, if no local cable ordinance exists, in the written
93 franchise agreement between the local cable operator and such local jurisdiction, times (ii) such
94 person's gross receipts from sales of video programming and sales of access to video programming, by
95 any means of transmission, directly to end-user subscribers that are located within such local
96 jurisdiction. Any person subject to tax pursuant to this section may elect at any time to pass through to
97 end-user subscribers, as a separate, itemized line charge on the end-user subscriber's bill, the excise tax
98 imposed hereunder.

99 B. The governing body of any county, city or town desiring to impose an excise tax may do so by the
100 adoption of an ordinance stating its purpose and referring to this section, and providing that such
101 ordinance shall be effective on the first day of a month at least ninety days after its adoption. A
102 certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received
103 within five days after its adoption.

104 C. If no cable operator provides cable service within the limits of a particular local jurisdiction, the
105 excise tax to be collected from persons shall be an amount not to exceed five percent multiplied by each
106 such person's gross receipts from sales of video programming and sales of access to video
107 programming, by any means of transmission, directly to end-user subscribers located within such local
108 jurisdiction. In the event that a cable operator shall thereafter provide cable service within the limits of
109 such local jurisdiction, the tax rate set pursuant to this section shall be adjusted to not exceed the
110 franchise fee rate lawfully imposed by the local cable ordinance of such local jurisdiction or, if no local
111 cable ordinance exists, in the written franchise agreement between the local cable operator and such
112 local jurisdiction.

113 D. Any person subject to the excise tax imposed hereunder shall be entitled to a credit against such
114 taxes equal in amount to any taxes on gross receipts (other than sales or use tax) that such person has
115 paid to another state or political subdivision thereof under a lawful requirement of such state or
116 political subdivision on sales by such person of the same video programming or sales of access to such
117 video programming to end-user subscribers located within the particular local jurisdiction. The amount
118 of the credit shall not exceed the tax imposed by this section.

119 E. The tax shall be paid by each person annually on or before January 31 and calculated upon the
120 amount of gross receipts of each person during the calendar year ending with the last day of the
121 preceding calendar year. Any payment of tax shall be considered as timely made if the payment which

has been received by the local jurisdiction is postmarked by the United States Postal Service on or prior to the final day on which payment is to be received.

§ 58.1-3818.4. Excise tax paid in lieu of other taxes.

The payment of an excise tax by persons in accordance with this article shall be in lieu of the payment of taxes pursuant to (i) any local tax authorized under Chapter 37 (§ 58.1-3700 et seq.) of this title or any other local tax or fee imposed solely on the gross receipts of persons providing video programming or access to video programming to subscribers located within the local jurisdiction and (ii) Article 4 (§ 58.1-3812 et seq.) of this chapter or any other state or local tax imposed solely on purchases of utility or telecommunications services, with respect to any revenues received by a common carrier or video programmer from subscribers for access to the common carrier's video dialtone network or for video programming.

§ 58.1-3818.5. Applicability of other taxes.

Any revenues received by a common carrier from video programmers for the transport of video programming to an end-user subscriber's premises or for access to the video dialtone network, shall be excluded from (i) the excise tax imposed pursuant to this article; (ii) the consumer utility tax imposed pursuant to Article 4 (§ 58.1-3812) of this chapter or any other local tax or fee imposed on purchases of utility services; (iii) the license tax imposed pursuant to Chapter 37 (§ 58.1-3700 et seq.) of this title; and (iv) any other state or local tax or fee imposed on receipts from the sale or use of communications services pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title or any other section of the Code.

§ 58.1-3818.6. Rules and regulations.

Any person subject to this excise tax by a particular local jurisdiction shall file an annual return with such local jurisdiction on or before January 31 of each year. A person may be audited by a local jurisdiction; however, any dispute or controversy that results from such audit or imposition of this excise tax shall be contested and resolved in accordance with a uniform set of procedures, rules and regulations, applicable to all local jurisdictions, that shall be administered by the Department of Taxation. The Tax Commissioner shall have authority to issue written binding opinions. The Tax Commissioner shall prepare, promulgate and distribute a form to be used by all persons subject to the video programming excise tax. The Tax Commissioner shall provide the video programmers and persons providing access to video programming with (i) the rate that is lawfully imposed by each local jurisdiction and (ii) a list of the "zip plus 4's" located in each such local jurisdiction. The Tax Commissioner may, in the manner provided by law, promulgate rules and regulations, not inconsistent with this article, as may be necessary for the effective enforcement of this article.

§ 58.1-3818.7. Severability.

The provisions of this article are severable. If any provision or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application. The jurisdiction permitted by § 58.1-3818.2 shall be to the full extent permitted by the United States Constitution.