

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 58.1-2662.1 and 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.

[H 2115]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2662.1 and 58.1-2690 of the Code of Virginia are 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:

§ 58.1-2662.1. Gross receipts of telephone and telegraph companies.

The special regulatory revenue tax on telephone and telegraph companies levied pursuant to § 58.1-2660 shall be based on gross receipts with the following deductions:

1. Revenue billed on behalf of another such telephone company or person to the extent such revenues are later paid over to or settled with that company or person;

2. Revenue from carrier access charges received from a telephone company which is holding a certificate of public convenience and necessity from the State Corporation Commission or from a telephone utility company providing interstate communications service, together with all revenue from billing and collection amounting to less than \$500,000 per year, and all revenues from shared network facilities agreements established under federal court order and like revenue received by other local exchange carriers; and

3. Revenue received as the proportionate part of interstate revenue attributable to the Commonwealth; and

4. Revenue received from a person providing video programming for the transport of video programming to an end-user subscriber's premises or for access to a video dialtone network.

§ 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 county, city, or 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 county, city, or town ~~or county~~; however, charges for long distance telephone calls shall not be considered receipts of business in such county, city, or town ~~or county~~.

D. Notwithstanding the provisions of subsection A, any county, city or town 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 county, city or town.

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

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57 cable system. Cable operator does not include a provider of wireless or direct-to-home satellite
58 transmission service.

59 "Direct-to-home satellite transmission" means the transmission, distribution or broadcasting of video
60 programming or services by satellite directly to an end-user subscriber without the use of ground
61 receiving or distribution equipment, except at the site of the end-user subscriber or in the uplink process
62 to the satellite.

63 "End-user subscriber" means the ultimate consumer of the video programming provided by video
64 programmers over any means of transmission, other than wireless or direct-to-home satellite
65 transmission. End-user subscriber does not include a video programmer that purchases a common
66 carrier's video dialtone transport service to provide video programming over the common carrier's video
67 dialtone system.

68 "Gross receipts" means the amount charged for or received by (i) video programmers from sales of
69 video programming and (ii) persons from sales of access to video programming, by any means of
70 transmission, other than wireless or direct-to-home satellite transmission, directly to end-user
71 subscribers with service addresses in the local jurisdiction. Gross receipts shall not include (i) amounts
72 charged for or received by persons from sales of telephone access or service that entitles the subscriber
73 to the privilege of interactive telephonic quality telecommunications with substantially all persons having
74 telephone or radio telephone stations constituting a part of a particular system or in a specified area;
75 (ii) the excise tax imposed pursuant to this section if the tax is shown as a separate line charge to
76 end-user subscribers; (iii) any other taxes, fees or surcharges on services furnished by common carriers
77 or video programmers which are imposed on subscribers by the Commonwealth, counties, cities or
78 towns pursuant to statute, ordinance, resolution or regulation and which are collected on behalf of said
79 governmental unit by the provider of the services; (iv) amounts charged for or received by persons from
80 sales of video programming which is delivered directly to end-user subscribers through a satellite
81 master antenna television (SMATV) system; (v) amounts received from retail sales of tangible personal
82 property that provides access to video programming; or (vi) any portion of a debt related to the sale of
83 video programming or the sale of access to a video network, the gross charges for which are not
84 otherwise deductible or excludable, that have become worthless or uncollectible, as determined under
85 applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently
86 paid, the video programmer or person shall report and pay the excise tax on that portion during the
87 reporting period in which the payment is made.

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

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

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

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

96 "Video programming" means video and/or information programming provided by, or generally
97 considered comparable to programming provided by, a cable operator. Video programming does not
98 include online, interactive information services to the extent access to such services is accomplished via
99 a dial-up or private telephone line or via wireless or direct-to-home satellite transmission.

100 "Wireless transmission" means the distribution of video programming using radio communications
101 including, but not limited to, terrestrial-based radio systems.

102 § 58.1-3818.3. Imposition of excise tax on gross receipts of video programming providers.

103 A. The governing body of any county, city or town may levy a video programming excise tax on any
104 person that sells video programming to end-user subscribers located within the Commonwealth by any
105 means of transmission other than wireless or direct-to-home satellite transmission, or provides such
106 end-user subscribers with access to video programming by any means of transmission, other than
107 wireless or direct-to-home satellite transmission, and that is not otherwise subject to local fees or taxes
108 (other than generally applicable taxes) on the gross receipts received from the provision of cable service
109 or video programming services to customers in such local jurisdiction. Such excise tax shall be imposed
110 on persons engaging in any commercial activity in the Commonwealth, employing capital in the
111 Commonwealth, owning, leasing or utilizing property in the Commonwealth, maintaining an office in the
112 Commonwealth, or having employees in the Commonwealth for all or any part of any calendar year.
113 The excise tax imposed by each local jurisdiction may be imposed only on the gross receipts of such
114 persons from sales of video programming or sales of access to video programming other than wireless
115 or direct-to-home satellite transmission, directly to end-user subscribers that are located within the
116 particular local jurisdiction. The amount of excise tax that each local jurisdiction is authorized to
117 collect from any person subject to tax pursuant to this section shall be determined by (i) multiplying the

franchise fee rate lawfully imposed by the local cable ordinance of each such local jurisdiction or, if no local cable ordinance exists, in the written franchise agreement between the local cable operator and such local jurisdiction, times (ii) such person's gross receipts from sales of video programming and sales of access to video programming, by any means of transmission, other than wireless or direct-to-home satellite transmission, directly to end-user subscribers that are located within such local jurisdiction. The rate imposed pursuant to this excise tax shall in no event exceed five percent. Any person subject to tax pursuant to this section may elect at any time to pass through to end-user subscribers, as a separate, itemized line charge on the end-user subscriber's bill, the excise tax imposed hereunder. If this tax is passed through to and collected from end-user subscribers, the taxes collected shall be deemed to be held in trust for each such local jurisdiction until remitted.

B. The governing body of any county, city or town desiring to impose an excise tax may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least ninety days after its adoption.

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

D. Any person subject to the excise tax imposed hereunder shall be entitled to a credit against such taxes equal in amount to any communications industry or similar taxes imposed on gross receipts from interstate video programming activity (other than sales or use tax or a generally applicable corporate income tax) that such person has paid to another state or political subdivision thereof under a lawful requirement of such state or political subdivision on sales by such person of the same video programming or sales of access to such video programming to end-user subscribers located within the particular Virginia local jurisdiction. The amount of the credit shall not exceed the tax imposed by this section on such sales of video programming or sales of access to video programming for which the tax is claimed. If the excise tax imposed hereunder is passed through to and collected from end-user subscribers, any tax credit permitted hereunder shall also be passed through to and credited against taxes collected from end-user subscribers.

E. The tax shall be paid to the taxing locality by each person quarterly on or before March 31, June 30, September 30, and December 31 and shall be calculated based on the gross receipts of each person during the three months prior to the month of payment. 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.

F. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax authorized by this section.

G. All persons subject to this tax shall register with the State Corporation Commission pursuant to procedures established by the Commission.

H. Nothing in this article shall be construed to authorize the governing body of any county, city or town to levy an excise tax on industrial satellite services of any kind.

§ 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 or fees pursuant to (i) any local tax authorized under Chapter 37 (§ 58.1-3700 et seq.) of this title or any other local tax if such tax is imposed solely on the gross receipts of persons providing video programming or access to video programming to subscribers located within the local jurisdiction; (ii) Article 4 (§ 58.1-3812 et seq.) of this chapter or any other state or local tax if such tax is imposed solely on purchases of video dialtone 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; and (iii) any franchise fee or similar fee based on revenue which is authorized or permitted by federal, state or local law or imposed by ordinance in any local jurisdiction or, agreed to pursuant to a written franchise agreement between the common carrier and the local jurisdiction, 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

179 excluded from (i) the excise tax imposed pursuant to this article; (ii) the consumer utility tax imposed
180 pursuant to Article 4 (§ 58.1-3812) of this chapter or any other local tax or fee imposed on purchases
181 of utility services; (iii) the license tax imposed pursuant to Chapter 37 (§ 58.1-3700 et seq.) of this title;
182 (iv) any other state or local tax or fee imposed on receipts from the sale or use of communications
183 services pursuant to § 58.1-400.1 or Chapter 6 (§ 58.1-600 et seq.) of this title; and (v) any franchise
184 fee or similar fee imposed by ordinance in any local jurisdiction or, if no local ordinance exists, in the
185 written franchise agreement between the common carrier and the local jurisdiction.

186 § 58.1-3818.6. Rules and regulations.

187 Any person subject to this excise tax by a particular local jurisdiction shall file quarterly tax returns
188 with their payments as provided in subsection E of § 58.1-3818.3. Each local jurisdiction which enacts
189 this excise act shall adopt a set of procedures, rules and regulations, not inconsistent with this Act, as
190 may be necessary for the effective enforcement of this Act. A person may be audited by a local
191 jurisdiction; accordingly, the aforementioned procedures, rules and regulations shall include provisions
192 relating to the administration and resolution of disputes and controversies that result from such audits
193 or the imposition of this excise tax. The local Commissioner of the Revenue may issue written advisory
194 opinions pertaining to the enforcement of this Act. Each local jurisdiction shall provide the video
195 programmers and persons providing access to video programming with (i) the rate that is lawfully
196 imposed by each local jurisdiction, (ii) a list of the zip plus 4's or a comparable list of addresses
197 located in each such local jurisdiction, and (iii) a copy of the ordinance and any amendments thereto
198 within thirty days after enactment.

199 § 58.1-3818.7. Severability.

200 The provisions of this article are severable. If any provision or its application to any person or
201 circumstances is held invalid, the invalidity shall not affect other provisions or applications of this
202 article which can be given effect without the invalid provision or application. The jurisdiction permitted
203 by § 58.1-3818.3 shall be to the full extent permitted by the United States Constitution.