

LD9748256

## HOUSE BILL NO. 2115

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Guest  
on February 7, 1995)

(Patron Prior to Substitute—Delegate Guest)

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.

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 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 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 video programming, 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 on subscribers by the Commonwealth, counties, cities or towns pursuant to statute, ordinance, resolution or regulation and which are collected on behalf of said governmental unit by the provider of the

60 services; or (iv) any portion of a debt related to the sale of video programming or the sale of access to  
61 a video network, the gross charges for which are not otherwise deductible or excludable, that have  
62 become worthless or uncollectible, as determined under applicable federal income tax standards. If the  
63 portion of the debt deemed to be bad is subsequently paid, the video programmer or person shall report  
64 and pay the excise tax on that portion during the reporting period in which the payment is made.

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

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

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

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

73 "Video programming" means video and/or information programming provided by, or generally  
74 considered comparable to programming provided by, a cable operator. Video programming does not  
75 include online, interactive information services to the extent access to such services is accomplished via  
76 a dial-up or private telephone line.

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. The rate imposed pursuant to this excise tax shall in no event exceed five percent. Any  
97 person subject to tax pursuant to this section may elect at any time to pass through to end-user  
98 subscribers, as a separate, itemized line charge on the end-user subscriber's bill, the excise tax imposed  
99 hereunder. If this tax is passed through to and collected from end-user subscribers, the taxes collected  
100 shall be deemed to be held in trust for each such local jurisdiction until remitted.

101 B. The governing body of any county, city or town desiring to impose an excise tax may do so by the  
102 adoption of an ordinance stating its purpose and referring to this section, and providing that such  
103 ordinance shall be effective on the first day of a month at least ninety 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 communications industry or similar taxes imposed on gross receipts from  
115 interstate video programming activity (other than sales or use tax or a generally applicable corporate  
116 income tax) that such person has paid to another state or political subdivision thereof under a lawful  
117 requirement of such state or political subdivision on sales by such person of the same video  
118 programming or sales of access to such video programming to end-user subscribers located within the  
119 particular Virginia local jurisdiction. The amount of the credit shall not exceed the tax imposed by this  
120 section on such sales of video programming or sales of access to video programming for which the tax  
121 is claimed. If the excise tax imposed hereunder is passed through to and collected from end-user

122 subscribers, any tax credit permitted hereunder shall also be passed through to and credited against  
 123 taxes collected from end-user subscribers.

124 E. The tax shall be paid to the taxing locality by each person quarterly on or before March 31, June  
 125 30, September 30, and December 31 and shall be calculated based on the gross receipts of each person  
 126 during the three months prior to the month of payment. Any payment of tax shall be considered as  
 127 timely made if the payment which has been received by the local jurisdiction is postmarked by the  
 128 United States Postal Service on or prior to the final day on which payment is to be received.

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

131 G. All persons subject to this tax shall be registered with the State Corporation Commission  
 132 pursuant to the provisions of Title 13.1 of the Virginia Code.

133 § 58.1-3818.4. Excise tax paid in lieu of other taxes.

134 The payment of an excise tax by persons in accordance with this article shall be in lieu of the  
 135 payment of taxes or fees pursuant to (i) any local tax authorized under Chapter 37 (§ 58.1-3700 et seq.)  
 136 of this title or any other local tax if such tax is imposed solely on the gross receipts of persons  
 137 providing video programming or access to video programming to subscribers located within the local  
 138 jurisdiction; (ii) Article 4 (§ 58.1-3812 et seq.) of this chapter or any other state or local tax if such tax  
 139 is imposed solely on purchases of video dialtone or telecommunications services, with respect to any  
 140 revenues received by a common carrier or video programmer from subscribers for access to the  
 141 common carrier's video dialtone network or for video programming; and (iii) any franchise fee or  
 142 similar fee based on revenue which is authorized or permitted by federal, state or local law or imposed  
 143 by ordinance in any local jurisdiction or, agreed to pursuant to a written franchise agreement between  
 144 the common carrier and the local jurisdiction, with respect to any revenues received by a common  
 145 carrier or video programmer from subscribers for access to the common carrier's video dialtone  
 146 network or for video programming.

147 § 58.1-3818.5. Applicability of other taxes.

148 Any revenues received by a common carrier from video programmers for the transport of video  
 149 programming to an end-user subscriber's premises or for access to the video dialtone network, shall be  
 150 excluded from (i) the excise tax imposed pursuant to this article; (ii) the consumer utility tax imposed  
 151 pursuant to Article 4 (§ 58.1-3812) of this chapter or any other local tax or fee imposed on purchases  
 152 of utility services; (iii) the license tax imposed pursuant to Chapter 37 (§ 58.1-3700 et seq.) of this title;  
 153 (iv) any other state or local tax or fee imposed on receipts from the sale or use of communications  
 154 services pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title or any other section of the Code; and (v)  
 155 any franchise fee or similar fee imposed by ordinance in any local jurisdiction or, if no local ordinance  
 156 exists, in the written franchise agreement between the common carrier and the local jurisdiction.

157 § 58.1-3818.6. Rules and regulations.

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

170 § 58.1-3818.7. Severability.

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