

LD3268256

## HOUSE BILL NO. 2115

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 15, 1995)

(Patron Prior to Substitute—Delegate Guest)

A BILL 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.

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.

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 cable system.

"End-user subscriber" means the ultimate consumer of the video programming provided by video

60 *programmers over any means of transmission. End-user subscriber does not include a video*  
61 *programmer that purchases a common carrier's video dialtone transport service to provide video*  
62 *programming over the common carrier's video dialtone system.*

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

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

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

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

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

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

91 *§ 58.1-3818.3. Imposition of excise tax on gross receipts of video programming providers.*

92 *A. The governing body of any county, city or town may levy a video programming excise tax on any*  
93 *person that sells video programming to end-user subscribers located within the Commonwealth by any*  
94 *means of transmission or provides such end-user subscribers with access to video programming by any*  
95 *means of transmission, with or without the use of wires, and that is not otherwise subject to local fees*  
96 *or taxes (other than generally applicable taxes) on the gross receipts received from the provision of*  
97 *cable service or video programming services to customers in such local jurisdiction. Such excise tax*  
98 *shall be imposed on persons engaging in any commercial activity in the Commonwealth, employing*  
99 *capital in the Commonwealth, owning, leasing or utilizing property in the Commonwealth, maintaining*  
100 *an office in the Commonwealth, or having employees in the Commonwealth for all or any part of any*  
101 *calendar year. The excise tax imposed by each local jurisdiction may be imposed only on the gross*  
102 *receipts of such persons from sales of video programming or sales of access to video programming*  
103 *directly to end-user subscribers that are located within the particular local jurisdiction. The amount of*  
104 *excise tax that each local jurisdiction is authorized to collect from any person subject to tax pursuant to*  
105 *this section shall be determined by (i) multiplying the franchise fee rate lawfully imposed by the local*  
106 *cable ordinance of each such local jurisdiction or, if no local cable ordinance exists, in the written*  
107 *franchise agreement between the local cable operator and such local jurisdiction, times (ii) such*  
108 *person's gross receipts from sales of video programming and sales of access to video programming, by*  
109 *any means of transmission, directly to end-user subscribers that are located within such local*  
110 *jurisdiction. The rate imposed pursuant to this excise tax shall in no event exceed five percent. Any*  
111 *person subject to tax pursuant to this section may elect at any time to pass through to end-user*  
112 *subscribers, as a separate, itemized line charge on the end-user subscriber's bill, the excise tax imposed*  
113 *hereunder. If this tax is passed through to and collected from end-user subscribers, the taxes collected*  
114 *shall be deemed to be held in trust for each such local jurisdiction until remitted.*

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

118 *C. If no cable operator provides cable service within the limits of a particular local jurisdiction, the*  
119 *excise tax to be collected from persons shall be an amount not to exceed five percent multiplied by each*  
120 *such person's gross receipts from sales of video programming and sales of access to video*  
121 *programming, by any means of 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.

§ 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 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; (iv) any other state or local tax or fee imposed on receipts from the sale or use of communications services pursuant to § 58.1-400.1 or Chapter 6 (§ 58.1-600 et seq.) of this title; and (v) any franchise fee or similar fee imposed by ordinance in any local jurisdiction or, if no local ordinance exists, in the written franchise agreement between the common carrier and the local jurisdiction.

§ 58.1-3818.6. Rules and regulations.

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

**183** *within thirty days after enactment.*

**184** *§ 58.1-3818.7. Severability.*

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