

978291607

SENATE BILL NO. 1066

Offered January 20, 1997

A BILL to amend and reenact §§ 58.1-3818.2, 58.1-3818.3, 58.1-3818.4 and 58.1-3818.5 of the Code of Virginia, relating to the video programming excise tax.

Patron—Barry

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3818.2, 58.1-3818.3, 58.1-3818.4 and 58.1-3818.5 of the Code of Virginia are amended and reenacted as follows:

§ 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. Cable operator does not include a provider of ~~wireless or~~ direct-to-home satellite transmission service.

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

"End-user subscriber" means the ultimate consumer of the video programming provided by video programmers over any means of transmission, other than ~~wireless or~~ direct-to-home satellite transmission. End-user subscriber does not include a video programmer that ~~purchases a common carrier's~~ obtains channel capacity on an open video dialtone transport system service to provide video programming over the ~~common carrier's video dialtone open video~~ 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, other than ~~wireless or~~ direct-to-home satellite 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 services; (iv) amounts charged for or received by persons from sales of video programming which is delivered directly to end-user subscribers through a satellite master antenna television (SMATV) system; (v) amounts received from retail sales of tangible personal property that provides access to video programming; (vi) any gross revenues of an unaffiliated video programming provider whose programming is carried on an open video system, but does include any carriage revenue received by the open video system operator from such unaffiliated video programming provider; or (vii) any portion of a debt related to the sale of video programming or the sale of access to a video network, the gross charges for which are not otherwise deductible or excludable, that have become worthless or uncollectible, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the video programmer or person shall report and pay the excise tax on that portion during the reporting period in which the payment is made.

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

"Open video system" means a system for the provision of cable service which complies with § 653 of the Federal Communications Act of 1934 (47 USC § 573).

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

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

"Video programmer" means an individual, partnership, association, joint stock company, trust,

INTRODUCED

SB1066

60 corporation, governmental entity, limited liability company, or any other entity that sells video
61 programming to end-user subscribers.

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

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

69 § 58.1-3818.3. Imposition of excise tax on gross receipts of video programming providers.

70 A. The governing body of any county, city or town may levy a video programming excise tax on
71 any person that sells video programming to end-user subscribers located within the Commonwealth by
72 any means of transmission other than ~~wireless~~ or direct-to-home satellite transmission, or provides such
73 end-user subscribers with access to video programming by any means of transmission, other than
74 ~~wireless~~ or direct-to-home satellite transmission, and that is not otherwise subject to local fees or taxes
75 (other than generally applicable taxes) on the gross receipts received from the provision of cable service
76 or video programming services to customers in such local jurisdiction. Such excise tax shall be imposed
77 on persons engaging in any commercial activity in the Commonwealth, employing capital in the
78 Commonwealth, owning, leasing or utilizing property in the Commonwealth, maintaining an office in the
79 Commonwealth, or having employees in the Commonwealth for all or any part of any calendar year.
80 The excise tax imposed by each local jurisdiction may be imposed only on the gross receipts of such
81 persons from sales of video programming or sales of access to video programming other than ~~wireless~~
82 ~~or~~ direct-to-home satellite transmission, directly to end-user subscribers that are located within the
83 particular local jurisdiction. The amount of excise tax that each local jurisdiction is authorized to collect
84 from any person subject to tax pursuant to this section shall be determined by (i) multiplying the
85 franchise fee rate lawfully imposed by the local cable ordinance of each such local jurisdiction or, if no
86 local cable ordinance exists, in the written franchise agreement between the local cable operator and
87 such local jurisdiction, times (ii) such person's gross receipts from sales of video programming and sales
88 of access to video programming, by any means of transmission, other than ~~wireless~~ or direct-to-home
89 satellite transmission, directly to end-user subscribers that are located within such local jurisdiction. The
90 rate imposed pursuant to this excise tax shall in no event exceed five percent. Any person subject to tax
91 pursuant to this section may elect at any time to pass through to end-user subscribers, as a separate,
92 itemized line charge on the end-user subscriber's bill, the excise tax imposed hereunder. If this tax is
93 passed through to and collected from end-user subscribers, the taxes collected shall be deemed to be
94 held in trust for each such local jurisdiction until remitted.

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

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

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

118 E. The tax shall be paid to the taxing locality by each person quarterly on or before March 31, June
119 30, September 30, and December 31 and shall be calculated based on the gross receipts of each person
120 during the three months prior to the month of payment. Any payment of tax shall be considered as
121 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 ~~videodialtone~~*open video system* 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 videodialtone network~~*open video system* 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~~ *with* 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 videodialtone network~~*open video system* 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 videodialtone network~~, *other than revenues received by an open video system operator*, 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 et seq.) 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.