

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 58.1-3812 of the Code of Virginia, relating to taxation of telecommunications service.

[S 233]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-3812 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3812. Telegraph and telephone companies.

A. *Subject to the limitations contained in subsection C*, any county, city or town may impose a tax on a taxable purchase by a consumer of local telecommunication service if the consumer's service address is located in such county, city or town. Except as otherwise provided, the tax shall not be imposed at a rate in excess of twenty percent of the monthly gross charge to a consumer and shall not be applicable to any amount so charged in excess of fifteen dollars per month for a residential consumer; however, any county, city or town that on July 1, 1972, imposed a tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. Notwithstanding the foregoing, the tax may be imposed only at a rate equal to ten percent of the monthly gross charge to a consumer of mobile local telecommunication and shall not be applicable to any amount so charged in excess of thirty dollars per month for each mobile service consumer. No county, city or town that currently is not collecting the tax on mobile local telecommunication service shall begin to collect the tax on mobile local telecommunication service before September 1, 1994, for bills sent to consumers on and after that date. However, any county with a population of at least 68,000 but not more than 69,000, any city with a population of at least 40,000 but not more than 41,000, and any city with a population of at least 66,000 but not more than 67,000 shall conform with the provisions of this section in accordance with the following schedule:

Fiscal Year	Rate	Cap
1994-95	10%	None
1995-96	10%	\$100
1996-97	10%	\$50
July 1, 1997 and thereafter		Full Conformity

B. Any tax enacted pursuant to the provisions of this section or any change in a tax or structure already in existence shall not be effective until 120 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, being received by the registered agent of the service provider that is required to collect the tax.

C. ~~Any tax imposed hereunder shall not apply~~ *No county shall impose a tax hereunder within the limits of any incorporated town located within such county which when such town constitutes a separate school district and such town imposes a town tax authorized by this section, provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or any such town with a population between 250 and 350 people which formerly provided its own water and sewer and is now served by a water and sewer service authority providing water or sewer services or any such town which formerly provided water and sewer services and is now served by the county in which it is located pursuant to an agreement between the town and the county shall be deemed to be providing such water or sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.* ~~No county shall impose a tax hereunder within the limits of any incorporated town located within such county when such town has enacted an ordinance on or before January 1, 2000, to impose a tax hereunder and such ordinance remains in effect. Except as provided in this subsection, no town shall impose a tax hereunder if the county within which such town is located imposes a county tax authorized by this section.~~

D. Any county, city or town may provide for an exemption from the tax for any public safety agency as defined in § 58.1-3813.

E. Any city with a population of not less than 27,000 and not more than 28,500 may provide an exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4 (§ 58.1-3650 et seq.) of Chapter 36. Any city providing such exemption shall provide the telephone

56 account numbers of all exempted churches and religious bodies to all service providers required to  
57 collect the tax as part of the notice required pursuant to subsection B.

58 F. A service provider of local telecommunication services shall collect the tax from the consumer by  
59 adding the tax to the monthly gross charge for such services. The tax shall, when collected, be stated as  
60 a distinct item separate and apart from the monthly gross charge. Until the consumer pays the tax to the  
61 service provider, the tax shall constitute a debt of the consumer to the county, city or town. If any  
62 consumer refuses to pay the tax, the service provider shall notify the county, city or town. After the  
63 consumer pays the tax to the service provider, the taxes collected shall be deemed to be held in trust by  
64 the service provider until remitted to the county, city or town.

65 G. A service provider shall remit monthly to each county, city or town the amount of tax billed  
66 during the preceding month to consumers with a service address in that county, city or town, less any  
67 discount allowed under § 58.1-3816.1.

68 H. No county, city or town may impose the tax on consumers of mobile local telecommunication  
69 service unless it also imposes the tax on the consumers of the other forms of local telecommunication  
70 services.

71 I. Any consumer shall be entitled to a refund from the county, city or town imposing the tax equal to  
72 the amount of any tax the consumer paid to a jurisdiction outside of the Commonwealth if such tax was  
73 legally imposed in such other jurisdiction; however, the amount of credit or refund shall not exceed the  
74 tax paid to the county, city or town on such purchase.

75 J. As used in this article, unless the context clearly requires otherwise:

76 "Affiliated group" shall have the same meaning ascribed to it in subdivision C 10 of § 58.1-3703,  
77 except, for purposes of this article, the word "entity" shall be substituted for the word "corporation"  
78 whenever it is used in that section.

79 "Bad debts" means any portion of a debt related to a sale of local telecommunication services, the  
80 gross charges for which are not otherwise deductible or excludable, that has become worthless or  
81 uncollectible, as determined under applicable federal income tax standards. If the portion of the debt  
82 deemed to be bad is subsequently paid, the service provider shall report and pay the tax on that portion  
83 during the reporting period in which the payment is made.

84 "Consumer" means a person who, individually or through agents, employees, officers, representatives,  
85 or permittees, makes a taxable purchase of local telecommunication services.

86 "Enhanced services" means services that employ computer processing applications to act on the  
87 format, code, or protocol or similar aspects of the information transmitted; provide additional, different,  
88 or restructured information; or involve interaction with stored information.

89 "Gross charges" means, subject to the exclusions of this section, the amount charged or paid for the  
90 taxable purchase of local telecommunication services. However, "gross charges" shall not include the  
91 following:

92 1. Charges or amounts paid that vary based on the distance and/or elapsed transmission time of the  
93 communication that are separately stated on the consumer's bill or invoice.

94 2. Charges or amounts paid for customer equipment, including such equipment that is leased or  
95 rented by the customer from any source, if such charges or amounts paid are separately identifiable from  
96 other amounts charged or paid for the provision of local telecommunication services on the service  
97 provider's books and records.

98 3. Charges or amounts paid for administrative services, including, without limitation, service  
99 connection and reconnection, late payments, and roamer daily surcharges.

100 4. Charges or amounts paid for special features that are not subject to taxation under § 4251 of the  
101 Internal Revenue Code of 1986, as amended.

102 5. Charges or amounts paid that are (i) the tax imposed by § 4251 of the Internal Revenue Code of  
103 1986, as amended; or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory  
104 authority.

105 6. Bad debts.

106 "Local telecommunication service," subject to the exclusions stated in this section, includes, without  
107 limitation, the two-way local transmission of messages through use of switched local telephone services;  
108 telegraph services; teletypewriter; local cellular mobile radio telecommunication services; specialized  
109 mobile radio; stationary two-way radio; or any other form of two-way mobile and portable  
110 communications.

111 "Local telephone service," subject to the exclusions stated in this section, includes any service subject  
112 to federal taxation as local telephone service as that term is defined in § 4252 of the Internal Revenue  
113 Code of 1986, as amended, or any successor statute.

114 "Mobile local telecommunication service" means any two-way mobile or portable local  
115 telecommunication service, including cellular mobile radio telecommunication service and specialized  
116 mobile radio.

117 "Mobile service consumer" means a person having a telephone number for mobile local  
118 telecommunication service who has made a taxable purchase of such service or on whose behalf another  
119 person has made a taxable purchase of such service.

120 "Mobile service provider" means every person engaged in the business of selling mobile local  
121 telecommunication services to consumers.

122 "Residential consumer" shall not include any consumer of mobile local telecommunication service.

123 "Service address" means the location of the telecommunication equipment from which the  
124 telecommunication is originated or at which the telecommunication is received by a consumer. However,  
125 if the service address is not a defined location, as in the case of mobile telephones, maritime systems,  
126 air-to-ground systems and the like, service address shall mean the location of the subscriber's primary  
127 use of the telecommunication equipment within the licensed service area. A mobile service provider may  
128 obtain a signed statement from a consumer indicating which county, city or town within the licensed  
129 service area is the location of the consumer's primary use of the telecommunication equipment. A  
130 mobile service provider shall be entitled to rely absolutely on a consumer's signed statement and shall  
131 remit the taxes collected to the county, city or town identified by the consumer. In the absence of a  
132 signed statement by a consumer, a mobile service provider shall identify the county, city or town of the  
133 consumer's primary use and shall remit the tax to such county, city or town based on any other  
134 reasonable method, including, without limitation, the consumer's billing address, service address, or  
135 telephone number within the licensed service area.

136 "Service provider" means every person engaged in the business of selling local telecommunication  
137 services to consumers.

138 "Taxable purchase" means the acquisition of telecommunication services for consumption or use;  
139 however, taxable purchase does not include (i) the provision of telecommunications among members of  
140 an affiliated group of entities by a member of the group for their own exclusive use and consumption  
141 and (ii) the purchase of telecommunications for resale in the subsequent provision of  
142 telecommunications, including, without limitation, carrier access charges, right of access charges, and  
143 charges for use of intercompany facilities; however, the acquisition of telecommunications by a provider  
144 of enhanced services is not the purchase of telecommunications for resale, even when the cost of the  
145 telecommunications is separately stated to the purchaser of the enhanced services, as long as the primary  
146 object of the purchase of the telecommunications by the provider is for the provision of enhanced  
147 services and not telecommunications. A person may make tax-free purchases of telecommunications for  
148 resale if the person provides to the service provider a sworn affidavit indicating that the person's  
149 purchases are nontaxable sales for resale.