

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 634

An Act to establish a schedule for, and initiate Virginia's transition to, a new system for taxing telecommunications services in the Commonwealth.

[H 1174]

Approved April 12, 2004

Whereas, it is in the best interest of the citizens of this Commonwealth to restructure state and local telecommunications taxes and fees so that the tax burden falls equitably on all users of telecommunications services; and

Whereas, it is the intent of the General Assembly that any new tax structure fully replace revenues provided to state and local governments by current telecommunications taxes and fees; and

Whereas, the Joint Subcommittee to Study the State and Local Taxation of the Entire Telecommunications Industry and Its Customers within the Commonwealth (HJR 651, 2003; HJR 209, 2002) has been reviewing ways Virginia could restructure its telecommunications taxes and fees; and

Whereas, the joint subcommittee has, in conjunction with the Commission on the Revision of Virginia's State Tax Code and the Streamlined Sales Tax Project Agreement, developed a set of guiding principles for telecommunications tax and fee restructuring; and

Whereas, those guiding principles are to reduce consumer confusion, consolidate taxes and fees, make taxes and fees uniform statewide, reduce the tax rate on the vast majority of Virginians, make taxes and fees competitively neutral, preserve state and local government revenues, and establish a single point of administration; and

Whereas, a working group of industry and local government representatives has been meeting under the auspices of the joint subcommittee to develop draft legislation for consideration by the joint subcommittee and the affected parties; and

Whereas, more information on the revenue impact from existing state and local telecommunications taxes and fees is needed before specific telecommunications tax and fee restructuring legislation can be enacted; and

Whereas, it is the intent of the General Assembly to collect this information prior to the 2005 Session so that telecommunications tax restructuring legislation may be introduced during the 2005 Session, to become effective July 1, 2005; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the General Assembly; the counties, cities and towns of the Commonwealth; and those providers of telecommunications services in Virginia are requested to work together to assist in the preparation of legislation for the 2005 General Assembly Session establishing a new telecommunications statewide tax and fee structure to become effective July 1, 2005.*

§ 2. During the 2005 Session, the intent is for a new method of taxation to be enacted, effective July 1, 2005, to replace the following taxes and fees, which will be repealed: local consumer utility tax on consumers of local exchange and wireless services (§ 58.1-3812); the gross receipts tax in excess of 0.5 percent (§ 58.1-3731); the Virginia Relay Center Assessment (§ 56-484.6); and state and local E-911 taxes and fees (§§ 58.1-3813.1 and 56-484.12).

§ 3. In place of these taxes and fees, the intent is for legislation to be introduced during and enacted by the 2005 General Assembly, levying a yet-to-be-named tax on all retail telecommunications service revenues. The tax shall not be less than 4.5 percent and to the extent the state and local retail sales and use tax rate is greater than 4.5 percent, the tax may not exceed the state and local retail sales and use tax rate. This tax will be assessed in lieu of any other state or local sales and use tax.

§ 4. The 2005 legislation shall also provide for a uniform statewide 911 tax not to exceed \$0.75 levied on all local exchange lines and a uniform statewide 911 fee not to exceed \$0.75 levied on all wireless service lines. The rate shall be set at the level needed to ensure that revenues from it, when combined with revenues from the yet-to-be-named tax, are sufficient to fully replace all revenues that would have resulted from those state and local taxes that are being repealed.

§ 5. Service providers shall collect the yet-to-be-named tax from each end user's (other than federal, state and local governments) monthly bill for taxable retail service. In addition, local exchange and wireless providers shall collect the 911 tax and the 911 fee respectively, on a per access line and wireless service line basis by adding the tax or fee to each end user's (other than federal, state and local governments) monthly bill. The yet-to-be-named tax, the 911 tax and the 911 fee, when billed, shall be stated as a distinct item separate and apart from the monthly charges for service. Until the end user pays the yet-to-be-named tax, the 911 tax and the 911 fee to the service provider, the yet-to-be-named tax, the 911 tax and the 911 fee shall constitute a debt of the end user to the authority or other third party (yet to be determined) maintaining a special fund, as set forth in § 6 below. After

the end user pays the taxes and fees to the appropriate service provider, all taxes and fees paid shall be deemed to be held in trust by such service provider until remitted to the authority or other third party. Provisions regarding how bad debts and sales for resale/access are to be treated shall be included in the 2005 legislation, if it is determined they are necessary.

§ 6. The 2005 legislation shall provide for the yet-to-be-named tax and the 911 tax collections to be remitted from the service providers to a special fund maintained by an authority or other third party (yet to be determined), which in turn will remit appropriate shares of the revenue to the state and individual local governments. The 911 fee collections shall be remitted from the wireless service providers directly to the Wireless 911 Board. To the extent that the 911 fee established as set forth in § 4, above, is inadequate to replace the total Wireless 911 Board revenues identified by the Auditor of Public Accounts as set forth in § 10, below, the difference will be transferred from the special fund to the Wireless Board. Also, sufficient funds will be transferred to the appropriate authority to adequately support the relay service centers.

§ 7. The 2005 legislation shall authorize the authority or other third party to conduct an annual audit, at their discretion, by means of a centralized and uniform method of any or all service providers to verify the accuracy of collections and special fund receipts. All expenses associated with the audits shall be paid from the special fund.

§ 8. The 2005 legislation shall establish a distribution methodology for the revenues in the special fund that will initially provide the state and each local governmental entity with revenues that are at least equal to those received in FY 2004, and in the case of local governments, from taxes and fees adopted by local ordinance on or before July 1, 2003. The distribution methodology shall also account for differences in future telecommunications revenue growth within the various localities. In addition, revenues distributed from the special fund shall not constitute state aid to localities for state budgeting purposes.

§ 9. The legislation shall also subject pre-paid calling arrangements to the Virginia retail sales and use tax in Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, at the point of sale.

§ 10. In order to determine the amount of revenues generated by the current tax system to be replaced by the yet-to-be-named tax, the 911 tax and the 911 fee, the Auditor of Public Accounts shall determine revenues received by the Commonwealth and by its individual counties, cities, and towns for the fiscal year commencing July 1, 2003, and ending June 30, 2004, at rates adopted on or before July 1, 2003 for the following taxes and fees collected by the service providers: the gross receipts tax in excess of 0.5 percent; the Virginia Relay Center Assessment; the local consumer utility tax; and the 911 taxes and fees, where they exist. Local governments and service providers shall cooperate with the Auditor of Public Accounts and provide information to him as requested. The Auditor or his agent shall not divulge any information acquired by him in the performance of his duties under this section that may identify specific service providers. The Auditor shall report his findings to the chairmen of the House and Senate Finance Committees no later than October 15, 2004.

§ 11. In the event the Auditor of Public Accounts determines that the rate limitations established in sections 3 and 4, above, for the yet-to-be-named tax, the 911 tax and the 911 fee, respectively, are insufficient to fully replace all revenues that would have resulted from those state and local taxes and fees that are intended to be repealed, no telecommunications tax restructuring legislation related to this study shall be introduced during the 2005 General Assembly Session.

§ 12. The working group of industry and local government representatives that has been assisting the joint subcommittee is requested to continue its work and to develop recommendations on the following issues, as well as any others that may arise prior to the 2005 General Assembly Session: an authority or third party to receive and disburse the revenues to the state and individual local governments; a distribution methodology for apportioning the revenues; and a centralized and uniform method for auditing the revenues produced by the taxes and fees. The working group shall report its findings and recommendations to the chairmen of the House and Senate Finance Committees no later than November 15, 2004.