# DEPARTMENT OF TAXATION
# 2017 Fiscal Impact Statement

**1. Patron** Glenn R. Davis

**2. Bill Number** HB 1502

**House of Origin:**
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

**Second House:**
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

**3. Committee** House Finance

**4. Title** Communications Sales and Use Tax; Universal-Service Fund Fees

**5. Summary/Purpose:**

This bill would exclude separately identified universal-service fund fees from the definition of sales price subject to tax for purposes of the Communications Sales and Use Tax.

Under current law, the Communications Sales and Use Tax is imposed on customers of communications services at the rate of five percent of the sales price of the services. The sales price of communications services, for purposes of the Communications Sales and Use Tax, may not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

The effective date of this bill is not specified.

**6. Budget amendment necessary:** Yes.
ITEM(S): 266, Department of Accounts Transfer Payments

**7. Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
**7b. Revenue Impact:**

| ***Fiscal Year*** | ***Dollars*** | ***Fund*** |
|---|---|---|
| 2016-17 | $0 | CSUTTF |
| 2017-18 | ($9.6 million) | CSUTTF |
| 2018-19 | ($10.4 million) | CSUTTF |
| 2019-20 | ($10.4 million) | CSUTTF |
| 2020-21 | ($10.4 million) | CSUTTF |
| 2021-22 | ($10.4 million) | CSUTTF |
| 2022-23 | ($10.4 million) | CSUTTF |

**8. Fiscal implications:**

Administrative Costs

The Department considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

Based on information provided by the Universal Service Administrative Company ("USAC"), which collects the monies for the Universal Service Fund, this bill is estimated to provide a revenue loss of $9.6 million in Fiscal Year 2018 and $10.4 million each Fiscal Year thereafter to the Communications Sales and Use Tax Trust Fund. Approximately 18 localities (the Counties of Albemarle, Arlington, Chesterfield, Fairfax, Hanover, Loudoun, Prince William, Spotsylvania, and Stafford and the Cities of Alexandria, Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Richmond, Roanoke, and Virginia Beach) would have an annual revenue loss exceeding $100,000.

In Fiscal Year 2015, $419.7 million in Communications Sales and Use Tax Trust Fund revenues were distributed to localities and $407.3 million were distributed to localities in Fiscal Year 2016.

**9. Specific agency or political subdivisions affected:**

Department of Taxation
All localities

**10. Technical amendment necessary:** No.

**11. Other comments:**

Background

2006 House Bill 568 (*Acts of Assembly* 2006, Chapter 780) replaced many of the state and local communications taxes and fees with a centrally administered Communications Sales and Use Tax and a uniform statewide E-911 Tax on landline telephone service beginning January 1, 2007. Additionally, House Bill 568 imposed a public rights-of-way use fee on cable television providers beginning January 1, 2007.

Under House Bill 568, revenue from the Communications Sales and Use Tax, the Landline E-911 Tax and the Cable Television Rights-of-Way Fee (the "Communications Taxes") is collected and remitted monthly by communications services providers to the Department and deposited into a non-reverting fund known as the Communications Sales and Use Tax Trust Fund (the "Fund"). After transferring moneys from the Fund to the Department to pay for the direct costs of administering the Communications Taxes, the moneys in the Fund are allocated and distributed to localities after payment (1) to the Department of Deaf and Hard-of-Hearing to fund the telephone relay service center and (2) any franchise fee amount due to localities in accordance with any cable television franchise agreements in effect as of January 1, 2007. Each locality's share of the net revenue is distributed as soon as practicable after the end of the month based on the locality's pro rata distribution from the Fund in fiscal year 2010, which was based on the share of total revenues received from the following taxes and fees in Fiscal Year 2006 from local tax rates adopted on or before January 1, 2006, with adjustments for certain localities:

- Local consumer utility tax on landline and wireless telephone service;
- Local E-911 tax on landline telephone service;
- The portion of the local BPOL tax on public service companies exceeding .5% currently billed to customers in some grandfathered localities;
- Cable television franchise fees;
- Video programming excise tax on cable television services; and
- Consumer utility tax on cable television.

<u>Sales Price</u>

Under current law, the Communications Sales and Use Tax is imposed on customers of communications services at the rate of five percent of the sales price of the services. The sales price of communications services, for purposes of the Communications Sales and Use Tax, may not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

For purposes of the communications sales tax, the sales price does not include the following amounts:

- Excise, sales or similar taxes levied by the United States or any state or local government on the purchase, sale, use or consumption of any communications services that are permitted or required to be added to the sales price of such service, if the tax is stated separately (including the federal excise tax on telephone service);
- A fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated (including E-911 fees and public rights-of-way fees);
- Coin-operated communications services;
- Sale or recharge of a prepaid calling service (including prepaid wireless telephone service);
- Provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99;

- A provider's internal use of communications services in connection with its business of providing communications services;

- Charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services;

- Sales for resale; and

- Charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government.

Universal Service Fund

The Telecommunications Act of 1996 established principles for universal service that specifically focused on increasing access to both telecommunications and advanced services for consumers living in rural and insular areas, and for consumers with low-incomes. Additional principles called for increased access to high-speed Internet in the nation's schools, libraries and rural health care facilities. The Federal Communications Commission ("FCC") established four programs within the Universal Service Fund to implement the statute. The four programs are: i) Connect America Fund for rural areas; ii) Lifeline (for low-income consumers), including initiatives to expand phone service for residents of Tribal lands; iii) Schools and Libraries; iv) Rural Health Care.

The Universal Service Fund is paid for by contributions from providers of telecommunications based on an assessment on their inter-state and inter-nation end user revenues. Examples of entities that contribute to the Fund are telecommunications carriers, including wire line and wireless companies, and interconnected Voice over Internet Protocol ("VoIP") providers, including cable companies that provide voice service. The Universal Service Administrative Company ("USAC"), administers the four programs and collects monies for the Universal Service Fund under the direction of the FCC.

Telecommunications companies contribute a certain percentage of the amount billed to their residential and business customers for interstate and international services to the Universal Service Fund. This percentage is called the contribution factor. The contribution factor changes quarterly and is increased or decreased depending on the needs of the Universal Service programs. While the FCC does not require telecommunications companies to pass through their universal service contribution obligations to their customers, the costs may be recovered through interstate telecommunications-related charges to end users. Such line-item charge may not exceed the interstate telecommunications portion of the customer's bill multiplied by the contribution factor.

Proposal

This bill would exclude separately identified universal-service fund fees from the sales price for purposes of the Communications Sales and Use Tax.

The effective date of this bill is not specified.

Similar Legislation

**House Bill 1719** and **Senate Bill 1003** would extend the date by which the Department is required to conduct its first recalculation of the percentage of funds in the Wireless E-911 Fund that is distributed to public safety answering points from July 1, 2017 to July 1, 2018.

cc : Secretary of Finance

Date: 1/14/2017 AM
DLAS File Name: HB1502F161