

LD7051176

HOUSE BILL NO. 756

Offered January 25, 1994

A BILL to amend and reenact § 58.1-3812 of the Code of Virginia, relating to the uniform taxation of local telecommunication services.

Patron—Cranwell

Referred to Committee on Finance

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. Any county, city or town may impose a tax on the consumers a taxable purchase by a consumer of the utility service or services provided by telegraph and telephone companies or other corporations coming within the provisions of Chapter 26 local telecommunication service if the consumer's service address is located in such county, city or town. ~~The~~ Except as otherwise provided, the tax shall not be imposed at a rate in excess of twenty percent of the monthly amount charged gross charge to consumers a consumer of the utility service and shall not be applicable to any amount so charged in excess of fifteen dollars per month for a residential customers. Any consumer; however, any county, city or town that on July 1, 1972, imposed a utility consumer 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 three dollars per month for each telephone number of consumers of mobile local telecommunication service. No county, city or town that currently is not imposing the tax on mobile local telecommunication service shall begin to impose the tax on mobile local telecommunication service before September 1, 1994, for bills sent to consumers on and after that date.

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 sixty days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation service provider that is required to collect the tax.

C. 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, 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 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.

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. As used in this section, the term "utility service or services" shall mean any service taxable as local telephone service under the provisions of the Internal Revenue Code of 1954, as amended, relating to federal communications taxes, as such provisions were in force and effect on December 31, 1971. A service provider of local telecommunication services shall collect the tax from the consumer by adding the tax to the monthly gross charge for such services. The tax shall, when collected, be stated as a distinct item separate and apart from the monthly gross charge. Until the consumer pays the tax to the service provider, the tax shall constitute a debt of the consumer to the county, city or town. If any consumer refuses to pay the tax, the service provider shall notify the county, city or town. After the consumer pays the tax to the service provider, the taxes collected shall be held in trust by the service provider until remitted to the county, city or town.

F. On or before the twentieth day of each calendar month, a service provider shall remit to each county, city or town the amount of tax collected during the preceding month from consumers with a service address in that county, city or town, less any discount allowed under § 58.1-3816.1.

G. Any county, city or town that provides for an exemption from the tax for residential consumers shall provide for an exemption from the tax for mobile service consumers.

H. Any consumer shall be allowed a credit against the tax imposed pursuant to this section or to a refund from the county, city or town imposing the tax equal to the amount of any tax the consumer paid to a jurisdiction outside of the Commonwealth if such tax was legally imposed in such other jurisdiction; however, the amount of credit or refund shall not exceed the tax paid to the county, city or town on such purchase.

INTRODUCED

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60 I. As used in this article, unless the context clearly requires otherwise:

61 "Affiliated group" shall have the same meaning ascribed to it in § 58.1-3703. B 10, except, for
62 purposes of this article, the word "entity" shall be substituted for the word "corporation" whenever it is
63 used in that section.

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

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

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

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

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

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

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

85 4. Charges or amounts paid for special features, including, without limitation, detailed billing, call
86 waiting, call forwarding, speed dialing, voice mail, and directory assistance.

87 5. Charges or amounts paid that are (i) the tax imposed by § 4251 of the Internal Revenue Code of
88 1986, as amended or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory
89 authority.

90 6. Bad debts.

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

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

98 "Mobile local telecommunication service" means any two-way mobile or portable local
99 telecommunication service, including cellular mobile radio telecommunication service and specialized
100 mobile radio.

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

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

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

107 "Service address" means the location of the telecommunication equipment from which the
108 telecommunication is originated or at which the telecommunication is received by a consumer. However,
109 if the service address is not a defined location, as in the case of mobile telephones, maritime systems,
110 air-to-ground systems and the like, service address shall mean the location of the subscriber's primary
111 use of the telecommunication equipment within the licensed service area. A mobile service provider may
112 obtain a signed statement from a consumer indicating which county, city or town within the licensed
113 service area is the location of the consumer's primary use of the telecommunication equipment. A mobile
114 service provider shall be entitled to rely absolutely on a consumer's signed statement and shall remit the
115 taxes collected to the county, city or town identified by the consumer. In the absence of a signed
116 statement by a consumer, a mobile service provider shall identify the county, city or town of the
117 consumer's primary use and shall remit the tax to such county, city or town based on any other
118 reasonable method, including, without limitation, the consumer's billing address, service address, or
119 telephone number within the licensed service area.

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

122 *"Taxable purchase" means the acquisition of telecommunication services for consumption or use;*
123 *however, taxable purchase does not include (i) the provision of telecommunications among members of*
124 *an affiliated group of entities by a member of the group for their own exclusive use and consumption*
125 *and (ii) the purchase of telecommunications for resale in the subsequent provision of*
126 *telecommunications, including, without limitation, carrier access charges, right of access charges, and*
127 *charges for use of intercompany facilities; however, the acquisition of telecommunications by a provider*
128 *of enhanced services is not the purchase of telecommunications for resale, even when the cost of the*
129 *telecommunications is separately stated to the purchaser of the enhanced services, as long as the*
130 *primary object of the purchase of the telecommunications by the provider is for the provision of*
131 *enhanced services and not telecommunications. A person may make tax-free purchases of*
132 *telecommunications for resale if the person provides to the service provider a sworn affidavit indicating*
133 *that the person's purchases are nontaxable sales for resale.*