VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 590

An Act to amend and reenact §§ 58.1-3812 and 58.1-3814 of the Code of Virginia, relating to local consumer utility taxes.

[H 2617]

Approved March 24, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3812 and 58.1-3814 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3812. Telegraph and telephone companies.

A. 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 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 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 *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.

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. 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 deemed to be held in trust by

the service provider until remitted to the county, city or town.

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

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

H. Any consumer shall be entitled 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.

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

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

"Bad debts" means any portion of a debt related to a sale of local telecommunication services, the gross charges for which are not otherwise deductible or excludable, that has 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 service provider shall report and pay the tax on that portion during the reporting period in which the payment is made.

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

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

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

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

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

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

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

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

6. Bad debts.

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

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

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

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

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

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

"Service address" means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a consumer. However, if the service address is not a defined location, as in the case of mobile telephones, maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment within the licensed service area. A mobile service provider may

obtain a signed statement from a consumer indicating which county, city or town within the licensed service area is the location of the consumer's primary use of the telecommunication equipment. A mobile service provider shall be entitled to rely absolutely on a consumer's signed statement and shall remit the taxes collected to the county, city or town identified by the consumer. In the absence of a signed statement by a consumer, a mobile service provider shall identify the county, city or town of the consumer's primary use and shall remit the tax to such county, city or town based on any other reasonable method, including, without limitation, the consumer's billing address, service address, or telephone number within the licensed service area.

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

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

§ 58.1-3814. Water or heat, light and power companies.

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26, which tax shall not be imposed at a rate in excess of twenty percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of fifteen dollars per month for residential customers. Any city, town or county 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.

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 that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. 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 on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26, 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 service authority providing water or sewer services *or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county* shall be deemed to be providing such water and 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.

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

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to utility sales of products used as motor vehicle fuels.