

LD3813256

HOUSE BILL NO. 2115

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 6, 1995)

(Patron Prior to Substitute—Delegate Guest)

A BILL to amend and reenact § 58.1-2690 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 38 of Title 58.1 an article numbered 5.1, consisting of sections numbered 58.1-3818.1 through 58.1-3818.7, relating to video programming excise tax.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2690 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 38 of Title 58.1 an article numbered 5.1, consisting of sections numbered 58.1-3818.1 through 58.1-3818.7, as follows:

§ 58.1-2690. No state or local tax on intangible personal property or money; local levies and license taxes.

A. Except as provided in this chapter, there shall be no state or local taxes assessed on the intangible personal property, gross receipts or other such money or income owned by telephone or telegraph companies, railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam.

B. On the real estate and tangible personal property of every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in Virginia and of railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam, there shall be local levies at the rates prescribed by § 58.1-2606.

C. Notwithstanding the provisions of subsection A, any county, city, or town or ~~county~~ may impose a license tax under § 58.1-3703 upon a corporation owning or operating telegraph or telephone lines in Virginia for the privilege of doing business therein, which shall not exceed one-half of one percent of the gross receipts of such business accruing to such corporation from such business in such county, city, or town or ~~county~~; however, charges for long distance telephone calls shall not be considered receipts of business in such county, city, or town or ~~county~~.

D. Notwithstanding the provisions of subsection A, any county, city or town may impose an excise tax under § 58.1-3818.3 upon a corporation owning or operating telegraph or telephone lines in Virginia, at a rate that shall not exceed the rate lawfully imposed by § 58.1-3818.3, on such corporation's gross receipts from sales of video programming or access to video programming directly to end-user subscribers who are located within such county, city or town.

Article 5.1.

Video Programming Excise Tax.

§ 58.1-3818.1. Title.

This article shall be known and may be cited as the "Video Programming Excise Tax Act."

§ 58.1-3818.2. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Cable operator" means any person or group of persons (i) that provides cable service over a cable system and directly or through one or more affiliates owns an interest in such cable system or (ii) that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

"End-user subscriber" means the ultimate consumer of the video programming provided by video programmers over any means of transmission. End-user subscriber does not include a video programmer that purchases a common carrier's video dialtone transport service to provide video programming over the common carrier's video dialtone system.

"Gross receipts" means the amount charged for or received by (i) video programmers from sales of video programming and (ii) persons from sales of access to video programming, by any means of transmission, directly to end-user subscribers with service addresses in the local jurisdiction. Gross receipts shall not include: (i) amounts charged for or received by persons from sales of telephone access or service that entitles the subscriber to the privilege of interactive telephonic quality telecommunications with substantially all persons having telephone or radio telephone stations constituting a part of a particular system or in a specified area; (ii) the excise tax imposed pursuant to this section if the tax is shown as a separate line charge to end-user subscribers; (iii) any other taxes, fees or surcharges on services furnished by common carriers or video programmers which are imposed on subscribers by the Commonwealth, counties, cities or towns pursuant to statute, ordinance, resolution or regulation and which are collected on behalf of said governmental unit by the provider of the

60 services; or (iv) any portion of a debt related to the sale of video programming or the sale of access to
61 a video network, the gross charges for which are not otherwise deductible or excludable, that have
62 become worthless or uncollectible, as determined under applicable federal income tax standards. If the
63 portion of the debt deemed to be bad is subsequently paid, the video programmer or person shall report
64 and pay the excise tax on that portion during the reporting period in which the payment is made.

65 "Local jurisdiction" means a county, city or town located in Virginia.

66 "Person" means an individual, partnership, association, joint stock company, trust, corporation,
67 governmental entity, limited liability company, or any other entity.

68 "Video dialtone service" means a common carrier service for the transport of video programming to
69 end-user subscribers.

70 "Video programmer" means an individual, partnership, association, joint stock company, trust,
71 corporation, governmental entity, limited liability company, or any other entity that sells video
72 programming to end-user subscribers.

73 "Video programming" means video and/or information programming provided by, or generally
74 considered comparable to programming provided by, a cable operator. Video programming does not
75 include online, interactive information services to the extent access to such services is accomplished via
76 a dial-up telephone line.

77 § 58.1-3818.3. Imposition of excise tax on gross receipts of video programming providers.

78 A. The governing body of any county, city or town may levy a video programming excise tax on any
79 person that sells video programming to end-user subscribers located within the Commonwealth by any
80 means of transmission or provides such end-user subscribers with access to video programming by any
81 means of transmission, with or without the use of wires, and that is not otherwise subject to local fees
82 or taxes (other than generally applicable taxes) on the gross receipts received from the provision of
83 cable service or video programming services to customers in such local jurisdiction. Such excise tax
84 shall be imposed on persons engaging in any commercial activity in the Commonwealth, employing
85 capital in the Commonwealth, owning, leasing or utilizing property in the Commonwealth, maintaining
86 an office in the Commonwealth, or having employees in the Commonwealth for all or any part of any
87 calendar year. The excise tax imposed by each local jurisdiction may be imposed only on the gross
88 receipts of such persons from sales of video programming or sales of access to video programming
89 directly to end-user subscribers that are located within the particular local jurisdiction. The amount of
90 excise tax that each local jurisdiction is authorized to collect from any person subject to tax pursuant to
91 this section shall be determined by (i) multiplying the franchise fee rate lawfully imposed by the local
92 cable ordinance of each such local jurisdiction or, if no local cable ordinance exists, in the written
93 franchise agreement between the local cable operator and such local jurisdiction, times (ii) such
94 person's gross receipts from sales of video programming and sales of access to video programming, by
95 any means of transmission, directly to end-user subscribers that are located within such local
96 jurisdiction. Any person subject to tax pursuant to this section may elect at any time to pass through to
97 end-user subscribers, as a separate, itemized line charge on the end-user subscriber's bill, the excise tax
98 imposed hereunder. If this tax is passed through to and collected from end-user subscribers, the taxes
99 collected shall be deemed to be held in trust for each such local jurisdiction until remitted.

100 B. The governing body of any county, city or town desiring to impose an excise tax may do so by the
101 adoption of an ordinance stating its purpose and referring to this section, and providing that such
102 ordinance shall be effective on the first day of a month at least ninety days after its adoption.

103 C. If no cable operator provides cable service within the limits of a particular local jurisdiction, the
104 excise tax to be collected from persons shall be an amount not to exceed five percent multiplied by each
105 such person's gross receipts from sales of video programming and sales of access to video
106 programming, by any means of transmission, directly to end-user subscribers located within such local
107 jurisdiction. In the event that a cable operator shall thereafter provide cable service within the limits of
108 such local jurisdiction, the tax rate set pursuant to this section shall be adjusted to not exceed the
109 franchise fee rate lawfully imposed by the local cable ordinance of such local jurisdiction or, if no local
110 cable ordinance exists, in the written franchise agreement between the local cable operator and such
111 local jurisdiction.

112 D. Any person subject to the excise tax imposed hereunder shall be entitled to a credit against such
113 taxes equal in amount to any communications industry or similar taxes imposed on gross receipts from
114 interstate video programming activity (other than sales or use tax or a generally applicable corporate
115 income tax) that such person has paid to another state or political subdivision thereof under a lawful
116 requirement of such state or political subdivision on sales by such person of the same video
117 programming or sales of access to such video programming to end-user subscribers located within the
118 particular Virginia local jurisdiction. The amount of the credit shall not exceed the tax imposed by this
119 section on such sales of video programming or sales of access to video programming for which the tax
120 is claimed. If the excise tax imposed hereunder is passed through to and collected from end-user
121 subscribers, any tax credit permitted hereunder shall also be passed through to and credited against

taxes collected from end-user subscribers.

E. The tax shall be paid to the taxing locality by each person quarterly on or before March 31, June 30, September 30, and December 31 and shall be calculated based on the gross receipts of each person during the three months prior to the month of payment. Any payment of tax shall be considered as timely made if the payment which has been received by the local jurisdiction is postmarked by the United States Postal Service on or prior to the final day on which payment is to be received.

F. 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.

G. All persons subject to this tax shall be registered with the State Corporation Commission pursuant to the provisions of Title 13.1 of the Virginia Code.

§ 58.1-3818.4. Excise tax paid in lieu of other taxes.

The payment of an excise tax by persons in accordance with this article shall be in lieu of the payment of taxes or fees pursuant to (i) any local tax authorized under Chapter 37 (§ 58.1-3700 et seq.) of this title or any other local tax if such tax is imposed solely on the gross receipts of persons providing video programming or access to video programming to subscribers located within the local jurisdiction; (ii) Article 4 (§ 58.1-3812 et seq.) of this chapter or any other state or local tax if such tax is imposed solely on purchases of video dialtone or telecommunications services, with respect to any revenues received by a common carrier or video programmer from subscribers for access to the common carrier's video dialtone network or for video programming; and (iii) any franchise fee or similar fee based on revenue which is authorized or permitted by federal, state or local law or imposed by ordinance in any local jurisdiction or, agreed to pursuant to a written franchise agreement between the common carrier and the local jurisdiction, with respect to any revenues received by a common carrier or video programmer from subscribers for access to the common carrier's video dialtone network or for video programming.

§ 58.1-3818.5. Applicability of other taxes.

Any revenues received by a common carrier from video programmers for the transport of video programming to an end-user subscriber's premises or for access to the video dialtone network, shall be excluded from (i) the excise tax imposed pursuant to this article; (ii) the consumer utility tax imposed pursuant to Article 4 (§ 58.1-3812) of this chapter or any other local tax or fee imposed on purchases of utility services; (iii) the license tax imposed pursuant to Chapter 37 (§ 58.1-3700 et seq.) of this title; (iv) any other state or local tax or fee imposed on receipts from the sale or use of communications services pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title or any other section of the Code; and (v) any franchise fee or similar fee imposed by ordinance in any local jurisdiction or, if no local ordinance exists, in the written franchise agreement between the common carrier and the local jurisdiction.

§ 58.1-3818.6. Rules and regulations.

Any person subject to this excise tax by a particular local jurisdiction shall file quarterly tax returns with their payments as provided in § 58.1-3818.3 E. The Association of Commissioners of the Revenue shall develop a model ordinance that may be adopted by each local jurisdiction. The Association of Commissioners of the Revenue shall also develop a uniform set of procedures, rules and regulations, not inconsistent with this Act, as may be necessary for the effective enforcement of this Act, that may be adopted and administered by each such local jurisdiction. A person may be audited by a local jurisdiction; accordingly, the aforementioned procedures, rules and regulations shall include provisions relating to the administration and resolution of disputes and controversies that result from such audits or the imposition of this excise tax. The Association of Commissioners of the Revenue shall assist local commissioners of the revenue in the issuance of written advisory opinions. The Association of Commissioners of the Revenue shall develop and prepare a model form that shall be distributed to all local jurisdictions for use by persons subject to the video programming excise tax. Each local jurisdiction shall provide the video programmers and persons providing access to video programming with (i) the rate that is lawfully imposed by each local jurisdiction and (ii) a list of the zip plus 4's or a comparable list of addresses located in each such local jurisdiction.

§ 58.1-3818.7. Severability.

The provisions of this article are severable. If any provision or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application. The jurisdiction permitted by § 58.1-3818.3 shall be to the full extent permitted by the United States Constitution.