

Communications Sales and Use Tax

This Act creates a new centrally administered Communications Sales and Use Tax and a Uniform Statewide E-911 tax. The Communications Tax is imposed on customers of communications services at the rate of 5% of the sales price of the services. The new tax appears as a line item on customers' bills.

Communications services subject to the tax include:

- landline and wireless telephone services (including Voice Over Internet Protocol);
- paging;
- cable television; and
- satellite television.

The Communications Tax will be collected by all communications services providers ("Providers") with sufficient contact, or nexus, with the state to be subject to the tax using the same rules that apply to the retail sales and use tax. Providers register with the state department of taxation in the same manner as sales tax dealers. Each provider separately states the amount of the tax and adds that tax to the sales price of the service. Thereafter, the tax is a debt from the customer to the provider until paid. All sums collected by a provider are held in trust for the state. As with the retail sales and use tax, every provider required to collect or pay the Communications Tax is required to file with the state department of taxation a monthly return and remit the tax due on or before the twentieth day of the month following the month in which the tax is billed. Providers are allowed a dealer discount on the first three percent of the Communications Tax in the following percentages:

Monthly Taxable Sales	Percentage
• \$ 0 to \$62,500	4%
• \$ 62,501 to \$208,000	3%
• \$ 208,001 and above	2%

The bill provides a mandatory procedure for customers to resolve erroneous billings of the Communications and E-911 taxes by writing their service provider.

The bill provides accounting rules for transactions where services that are subject to different tax treatments are sold for a non-itemized charge. If the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services is subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.

For purposes of the Communications Tax, the sales price does not include the following:

- excise taxes on communications services that are permitted or required to be added to the sales price of such service, if the tax is stated separately;
- a fee or assessment that is required to be added to the price of service if the fee or assessment is separately stated;
- coin-operated communications services;
- sale or recharge of a prepaid calling service;
- air-to-ground radiotelephone services;
- 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; and

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

The following are not considered taxable communications services:

- information services;
- installation or maintenance of wiring or equipment on a customer's premises;
- the sale or rental of tangible personal property;
- the sale of advertising, including but not limited to, directory advertising;
- bad check charges;
- billing and collection services;
- Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging;
- digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and
- over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission.

All sales by a provider are subject to the Communications Tax until the contrary is established. The burden of proving that a sale of communications services is not taxable is upon the provider unless it obtains an exemption certificate from the customer. Internet access service providers that purchase telecommunications services to provide Internet access are authorized to use self-issued exemption certificates. Upon receipt of the certificate, the communications service provider is relieved of any liability for the tax related to that sale. In the event the provider of Internet access uses the telecommunications service for any taxable purpose, the Internet access service provider is required to pay the Communications Tax directly to the department of taxation.

The department of taxation is required to allow a person who uses taxable communications services to pay the Communications Tax directly to the department and waive the collection of the tax by the provider.

This bill exempts from the Communications Tax any entity that was exempt from the local consumer utility tax on landline and wireless telephone service and the local E-911 tax on landline telephone service.

The bill imposes a new E-911 tax on landline telephone service. The E-911 tax will be state tax administered and enforced by the department of taxation. The E-911 tax is imposed on the end user of each access line at the rate of \$0.75 per access line. The new tax appears as a line item on customers' bills. Providers are allowed a dealer discount of three percent of the amount of the E-911 tax revenues.

Submitted as:

Virginia

HB 568/Chapter 780

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish a
2 Communications Sales and Use Tax.”

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Section 2. [Definitions.] As used in Sections 1 through 17 of this Act:

(1) “Cable service” means the one-way transmission to subscribers of video programming as defined in 47 U.S.C. § 522(20) or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303(v).

(2) “Call-by-call basis” means any method of charging for telecommunications services where the price is measured by individual calls.

(3) “Coin-operated communications service” means a communications service paid for by means of inserting coins in a coin-operated telephone.

(4) “Communications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, the connection, movement, change, or termination of communications services; detailed billing of communications services; sale of directory listings in connection with a communications service; central office and custom calling features; voice mail and other messaging services; and directory assistance.

(5) “Communications services provider” means every person who provides communications services to customers in the state and is or should be registered with the [state department of taxation] as a provider.

(6) “Cost price” means the actual cost of the purchased communications service computed in the same manner as the sales price.

(7) “Customer” means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. “Customer” does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider’s licensed service area.

(8) “Customer channel termination point” means the location where the customer either inputs or receives the private communications service.

(9) “Information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

(10) “Internet access service” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. “Internet access service” does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

(11) “Place of primary use” means the street address representative of where the customer’s use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile

50 communications services, the place of primary use shall be within the licensed service area of the
51 home service provider.

52 (12) “Postpaid calling service” means the communications service obtained by making a
53 payment on a call-by-call basis either through the use of a credit card or payment mechanism
54 such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not
55 associated with the origination or termination of the communications service.

56 (13) “Prepaid calling service” means the right to access exclusively communications
57 services, which must be paid for in advance and which enables the origination of calls using an
58 access number or authorization code, whether manually or electronically dialed, and that is sold
59 in predetermined units or dollars that decrease in number with use.

60 (14) “Private communications service” means a communications service that entitles the
61 customer or user to exclusive or priority use of a communications channel or group of channels
62 between or among channel termination points, regardless of the manner in which such channel or
63 channels are connected, and includes switching capacity, extension lines, stations, and any other
64 associated services that are provided in connection with the use of such channel or channels.

65 (15) “Retail sale” or a “sale at retail” means a sale of communications services for any
66 purpose other than for resale or for use as a component part of or for the integration into
67 communications services to be resold in the ordinary course of business.

68 (16) “Sales price” means the total amount charged in money or other consideration by a
69 communications services provider for the sale of the right or privilege of using communications
70 services in the state, including any property or other services that are part of the sale. The sales
71 price of communications services shall not be reduced by any separately identified components
72 of the charge that constitute expenses of the communications services provider, including but not
73 limited to, sales taxes on goods or services purchased by the communications services provider,
74 property taxes, taxes measured by net income, and universal-service fund fees.

75 (17) “Service address” means, (i) the location of the telecommunications equipment to
76 which a customer’s call is charged and from which the call originates or terminates, regardless of
77 where the call is billed or paid. If the location is not known in clause (i), “service address” means
78 (ii) the origination point of the signal of the telecommunications system or in information
79 received by the seller from its service provider, where the system used to transport such signals
80 is not that of the seller. If the location is not known in clauses (i) and (ii), the “service address
81 means” (iii) the location of the customer’s place of primary use.

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83 Section 3. [*Administration.*] The [Tax Commissioner] shall administer and enforce the
84 collection of the taxes and penalties imposed by this Act.

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86 Section 4. [*Imposition of Sales Tax; Exemptions.*]

87 A. Beginning [insert date], there is levied and imposed, in addition to all other taxes and
88 fees of every kind imposed by law, a sales or use tax on the customers of communications
89 services in the amount of [5%] of the sales price of each communications service that is sourced
90 to the state in accordance with Section 5 of this Act.

91 B. The sales price on which the tax is levied shall not include charges for any of the
92 following: an excise, sales, or similar tax levied by the United States or any state or local
93 government on the purchase, sale, use, or consumption of any communications service that is
94 permitted or required to be added to the sales price of such service, if the tax is stated separately;
95 a fee or assessment levied by the United States or any state or local government, including but
96 not limited to, regulatory fees and emergency telephone surcharges, that is required to be added
97 to the price of service if the fee or assessment is separately stated; coin-operated communications

98 services; sale or recharge of a prepaid calling service; provision of air-to-ground radiotelephone
99 services, as that term is defined in 47 C.F.R. § 22.99; a communications services provider's
100 internal use of communications services in connection with its business of providing
101 communications services; charges for property or other services that are not part of the sale of
102 communications services, if the charges are stated separately from the charges for
103 communications services; sales for resale; and charges for communications services to the state,
104 any political subdivision of the state, and the federal government and any agency or
105 instrumentality of the federal government.

106 C. Communications services on which the tax is hereby levied shall not include the
107 following: information services; installation or maintenance of wiring or equipment on a
108 customer's premises; the sale or rental of tangible personal property; the sale of advertising,
109 including but not limited to, directory advertising; bad check charges; billing and collection
110 services; Internet access service, electronic mail service, electronic bulletin board service, or
111 similar services that are incidental to Internet access, such as voice capable email or instant
112 messaging; digital products delivered electronically, such as software, downloaded music, ring
113 tones, and reading materials; and over-the-air radio and television service broadcast without
114 charge by an entity licensed for such purposes by the Federal Communications Commission.
115 Also, those entities exempt from the tax imposed in accordance with the provisions of [insert
116 citation], shall continue to be exempt from the tax imposed in accordance with the provisions of
117 this Act.

118

119 Section 5. [*Sourcing Rules for Communication Services.*]

120 A. Except for the defined communication services in subsection C, the sale of
121 communications service sold on a call-by-call basis shall be sourced to the state when the call
122 originates and terminates in the state or either originates or terminates in the state and the service
123 address is also located in the state.

124 B. Except for the defined communication services in subsection C, a sale of
125 communication services sold on a basis other than a call-by-call basis, shall be sourced to the
126 customer's place of primary use.

127 C. The sale of the following communication services shall be sourced to the state as
128 follows:

129 1. Subject to the definitions and exclusions of the federal Mobile
130 Telecommunications Sourcing Act, 4 U.S.C. § 116, a sale of mobile communication services
131 shall be sourced to the customer's place of primary use.

132 2. A sale of postpaid calling service shall be sourced to the origination point of the
133 communications signal as first identified by either the seller's communications system or
134 information received by the seller from its service provider, where the system used to transport
135 such signals is not that of the seller.

136 3. A sale of a private communications service shall be sourced as follows:

137 a. Service for a separate charge related to a customer channel termination
138 point shall be sourced to each jurisdiction in which such customer channel termination point is
139 located;

140 b. Service where all customer termination points are located entirely
141 within [one jurisdiction] shall be sourced to such jurisdiction in which the customer channel
142 termination points are located;

143 c. Service for segments of a channel between [two customer channel
144 termination points] located in different jurisdictions and which segments of a channel are

145 separately charged shall be sourced [50% to each jurisdiction in which the customer channel
146 termination points are located]; and

147 d. Service for segments of a channel located in [more than one jurisdiction
148 and which segments are not separately billed shall] be sourced in each jurisdiction based on a
149 percentage determined by dividing the number of customer channel termination points in each
150 jurisdiction by the total number of customer channel termination points.

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152 Section 6. [*Bundled Transaction of Communications Services.*]

153 A. For purposes of this Act, a bundled transaction of communications services includes
154 communications services taxed under this Act and consists of distinct and identifiable properties,
155 services, or both, sold for one nonitemized charge for which the tax treatment of the distinct
156 properties and services is different.

157 B. In the case of a bundled transaction described in subsection A, if the charge is
158 attributable to services that are taxable and services that are nontaxable, the portion of the charge
159 attributable to the nontaxable services shall be subject to tax unless the communications services
160 provider can reasonably identify the nontaxable portion from its books and records kept in the
161 regular course of business.

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163 Section 7. [*Tax Collectible by Communication Service Providers; Jurisdiction.*]

164 A. The tax levied by Section 4 of this Act shall be collectible by all people who are
165 communications services providers, who have sufficient contact with the state to qualify under
166 subsection B, and who are required to be registered under Section 9 of this Act. However, the
167 communications services provider shall separately state the amount of the tax and add that tax to
168 the sales price of the service. Thereafter, the tax shall be a debt from the customer to the
169 communications services provider until paid and shall be recoverable at law in the same manner
170 as other debts.

171 B. A communications services provider shall be deemed to have sufficient activity within
172 the state to require registration if they do any of the activities listed in [insert citation].

173 C. Nothing contained in this Act shall limit any authority that the state may enjoy under
174 the provisions of federal law or an opinion of the United States Supreme Court to require the
175 collection of communications sales and use taxes by any communications services provider.

176

177 Section 8. [*Customer Remedy Procedures for Billing Errors.*] If a customer believes that
178 an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a
179 billing is erroneous, the customer shall notify the communications service provider in writing.
180 The customer shall include in this written notification the street address for the customer's place
181 of primary use, the account name and number for which the customer seeks a correction, a
182 description of the error asserted by the customer, and any other information that the
183 communications service provider reasonably requires to process the request. Within [15 days] of
184 receiving a notice under this section in the provider's billing dispute office, the communications
185 service provider shall review its records, within an additional [15 days], to determine the
186 customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place
187 of primary use or taxing jurisdiction is in error, the communications service provider shall
188 correct the error and refund or credit the amount of tax erroneously collected from the customer
189 for a period of up to [two years]. If this review shows that the amount of tax or assignment of
190 place of primary use or taxing jurisdiction is correct, the communications service provider shall
191 provide a written explanation to the customer. The procedures in this section shall be the first
192 course of remedy available to customers seeking correction of assignment of place of primary

193 use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by
194 the communications service provider, and no cause of action based upon a dispute arising from
195 such taxes shall accrue until a customer has reasonably exercised the rights and procedures set
196 forth in this subsection.

197

198 Section 9. [*Communications Services Providers' Certificates of Registration; Penalty.*]

199 A. Every person desiring to engage in or conduct business as a communications services
200 provider in the state shall file with the [Tax Commissioner] an application for a certificate of
201 registration.

202 B. Every application for a certificate of registration shall set forth the name under which
203 the applicant transacts or intends to transact business, the location of his place of business, and
204 such other information as the [Tax Commissioner] may reasonably require.

205 C. When the required application has been made, the [Tax Commissioner] shall issue to
206 each applicant a certificate of registration. A certificate of registration is not assignable and is
207 valid only for the person in whose name it is issued and for the transaction of the business
208 designated therein.

209 D. Whenever a person fails to comply with any provision of this Act or any rule or
210 regulation relating thereto, the [Tax Commissioner], upon a hearing after giving the
211 noncompliant person [30 days'] notice in writing, specifying the time and place of the hearing
212 and requiring them to show cause why their certificate of registration should not be revoked or
213 suspended, may revoke or suspend the certificate of registration held by that person. The notice
214 may be personally served or served by registered mail directed to the last known address of the
215 noncompliant person.

216 E. Any person who engages in business as a communications services provider in the
217 state without obtaining a certificate of registration, or after a certificate of registration has been
218 suspended or revoked, shall be guilty of a [Class 2 misdemeanor] as shall each officer of a
219 corporation that so engages in business as an unregistered communications services provider.
220 Each day's continuance in business in violation of this section shall constitute a separate offense.

221 F. If the holder of a certificate of registration ceases to conduct their business, the
222 certificate shall expire upon cessation of business, and the certificate holder shall inform the [Tax
223 Commissioner] in writing within [30 days] after they have ceased to conduct business. If the
224 holder of a certificate of registration desires to change their place of business, they shall so
225 inform the [Tax Commissioner] in writing and their certificate shall be revised accordingly.

226 G. This section shall also apply to any person who engages in the business of furnishing
227 any of the things or services taxable under this Act. Moreover, it shall apply to any person who is
228 liable only for the collection of the use tax.

229

230 Section 10. [*Returns by Communications Services Providers; Payment to Accompany*
231 *Return.*]

232 A. Every communications services provider required to collect or pay the sales or use tax
233 shall, [on or before the twentieth day of the month following the month in which the tax is
234 billed], transmit to the [Tax Commissioner] a return showing the sales price, or cost price, as the
235 case may be, and the tax collected or accrued arising from all transactions taxable under this Act.
236 In the case of communications services providers regularly keeping books and accounts on the
237 basis of an [annual period] that varies from [52 to 53 weeks], the [Tax Commissioner] may make
238 rules and regulations for reporting consistent with such accounting period. A sales or use tax
239 return shall be filed by each registered communications services provider even though the

240 communications services provider is not liable to remit to the [Tax Commissioner] any tax for
241 the period covered by the return.

242 B. At the time of transmitting the return required under subsection A, the
243 communications services provider shall remit to the [Tax Commissioner] the amount of tax due
244 after making appropriate adjustments for accounts uncollectible and charged off as provided in
245 Section 11 of this Act. The tax imposed by this Act shall, for each period, become delinquent on
246 the [twenty-first day of the succeeding month] if not paid.

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248 Section 11. [*Bad Debts.*] In any return filed under the provisions of this Act, the
249 communications services provider may credit, against the tax shown to be due on the return, the
250 amount of sales or use tax previously returned and paid on accounts that are owed to the
251 communications services provider and that have been found to be worthless within the period
252 covered by the return. The credit, however, shall not exceed the amount of the uncollected
253 payment determined by treating prior payments on each debt as consisting of the same
254 proportion of payment, sales tax, and other nontaxable charges as in the total debt originally
255 owed to the communications services provider. The amount of accounts for which a credit has
256 been taken that are thereafter in whole or in part paid to the communications services provider
257 shall be included in the first return filed after such collection.

258
259 Section 12. [*Discount.*] For the purpose of compensating a communications services
260 provider holding a certificate of registration under Section 9 of this Act for accounting for and
261 remitting the tax levied by this Act, a communications services provider shall be allowed the
262 following percentages of the [first 3% of the tax levied by Section 4 of this Act] and accounted
263 for in the form of a deduction in submitting their return and paying the amount due by them if
264 the amount due was not delinquent at the time of payment.

265 Monthly Taxable Sales	265 Percentage
266 \$0 to \$62,500	266 4%
267 \$62,501 to \$208,000	267 3%
268 \$208,001 and above	268 2%

269 The discount allowed by this section shall be computed according to the schedule provided,
270 regardless of the number of certificates of registration held by a communications services
271 provider.

272
273 Section 13. [*Sales Presumed Subject to Tax; Exemption Certificates; Internet Access*
274 *Service Providers.*]

275 A. All sales are subject to the tax until the contrary is established. The burden of proving
276 that a sale of communications services is not taxable is upon the communications services
277 provider unless they take from the taxpayer a certificate to the effect that the service is exempt
278 under this Act.

279 B. The exemption certificate mentioned in this section shall relieve the person who
280 obtains such a certificate from any liability for the payment or collection of the tax, except upon
281 notice from the [Tax Commissioner] that the certificate is no longer acceptable. The exemption
282 certificate shall be signed, manually or electronically, by and bear the name and address of the
283 taxpayer; shall indicate the number of the certificate of registration, if any, issued to the
284 taxpayer; shall indicate the general character of the communications services sold or to be sold
285 under a blanket exemption certificate; and shall be substantially in the form as the [Tax
286 Commissioner] may prescribe.

287 C. In the case of a provider of Internet access service that purchases a
288 telecommunications service to provide Internet access, the Internet access provider shall give the
289 communications service provider a certificate of use containing its name, address and signature,
290 manually or electronically, of an officer of the Internet access service provider. The certificate of
291 use shall state that the purchase of telecommunications service is being made in its capacity as a
292 provider of Internet access in order to provide such access. Upon receipt of the certificate of use,
293 the communications service provider shall be relieved of any liability for the communications
294 sales and use tax related to the sale of telecommunications service to the Internet access service
295 provider named in the certificate. In the event the provider of Internet access uses the
296 telecommunications service for any taxable purpose, that provider shall be liable for and pay the
297 communications sales and use tax directly to the state in accordance with Section 14 of this Act.

298 D. If a taxpayer who holds a certificate under this section and makes any use of the
299 service other than an exempt use or retention, demonstration, or display while holding the
300 communications service for resale in the regular course of business, such use shall be deemed a
301 taxable sale by the taxpayer as of the time the service is first used by them, and the cost of the
302 property to them shall be deemed the sales price of such retail sale.
303

304 Section 14. *[Direct Payment Permits.]*

305 A. Notwithstanding any other provision of this Act, the [Tax Commissioner] shall
306 authorize a person who uses taxable communications services within the state to pay any tax
307 levied by this Act directly to the state and waive the collection of the tax by the communications
308 services provider. No such authority shall be granted or exercised except upon application to the
309 [Tax Commissioner] and issuance by the [Tax Commissioner] of a direct payment permit. If a
310 direct payment permit is issued, then payment of the communications sales and use tax on
311 taxable communications services shall be made directly to the [Tax Commissioner] by the permit
312 holder.

313 B. On or before the [twentieth day of each month] every permit holder shall file with the
314 [Tax Commissioner] a return for the preceding month, in a form prescribed by the [Tax
315 Commissioner], showing the total value of the taxable communications services so used, the
316 amount of tax due from the permit holder, which amount shall be paid to the [Tax
317 Commissioner] with the submitted return, and other information as the [Tax Commissioner]
318 deems reasonably necessary. The [Tax Commissioner], upon written request by the permit
319 holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on
320 the tax shall be chargeable on every extended payment at the rate determined in accordance with
321 [insert citation].

322 C. A permit granted pursuant to this section shall continue to be valid until surrendered
323 by the holder or cancelled for cause by the [Tax Commissioner].

324 D. A person holding a direct payment permit that has not been cancelled shall not be
325 required to pay the tax to the communications services provider as otherwise required by this
326 Act. Such people shall notify each communications services provider from whom purchases of
327 taxable communications services are made of their direct payment permit number and that the
328 tax is being paid directly to the [Tax Commissioner]. Upon receipt of notice, a communications
329 services provider shall be absolved from all duties and liabilities imposed by this Act for the
330 collection and remittance of the tax with respect to sales of taxable communications services to
331 the direct payment permit holder. Communications services providers who make sales upon
332 which the tax is not collected by reason of the provisions of this section shall maintain records in
333 a manner that the amount involved and identity of each purchaser may be ascertained.

334 E. Upon the cancellation or surrender of a direct payment permit, the provisions of this
335 Act, without regard to this section, shall thereafter apply to the person who previously held the
336 direct payment permit, and that person shall promptly notify in writing communications services
337 providers from whom purchases of taxable communications services are made of such
338 cancellation or surrender. Upon receipt of notice, the communications services provider shall be
339 subject to the provisions of this Act, without regard to this section, with respect to all sales of
340 taxable communications services thereafter made to the former direct payment permit holder.

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342 Section 15. [*Collection of Tax; Penalty.*]

343 A. The tax levied by this Act shall be collected and remitted by the communications
344 services provider, but the communications services provider shall separately state the amount of
345 the tax and add such tax to the sales price or charge. Thereafter, the tax shall be a debt from the
346 customer to the communications services provider until paid and shall be recoverable at law in
347 the same manner as other debts.

348 B. Notwithstanding any exemption from taxes that any communications services provider
349 now or hereafter may enjoy under the [Constitution or laws of the state], or any other state, or of
350 the United States, a communications services provider shall collect the tax from the customer of
351 taxable communications services and shall remit the same to the [Tax Commissioner] as
352 provided by this Act.

353 C. Any communications services provider collecting the communications sales or use tax
354 on transactions exempt or not taxable under this Act shall remit to the [Tax Commissioner] such
355 erroneously or illegally collected tax unless or until the communications services provider can
356 affirmatively show that the tax has been refunded to the customer or credited to the customer's
357 account.

358 D. Any communications services provider who intentionally neglects, fails, or refuses to
359 collect the tax upon every taxable sale of communications services made by them, their
360 employees, or their agents or employees on their behalf, shall be liable for and pay the tax them
361 self. Moreover, any communications services provider who intentionally neglects, fails, or
362 refuses to pay or collect the tax herein provided, either by themselves or through their agents or
363 employees, shall be guilty of a [Class 1 misdemeanor]. All sums collected by a communications
364 services provider as required by this Act shall be deemed to be held in trust for the state.

365
366 Section 16. [*Sale of Business.*] If any communications services provider liable for any
367 tax, penalty, or interest levied by this Act sells their business or stock of goods or quits the
368 business, they shall make a final return and payment within [15 days] after the date of selling or
369 quitting the business. Their successors or assigns, if any, shall withhold a sufficient amount of
370 the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner
371 produces a receipt from the [Tax Commissioner] showing that all taxes, penalties, and interest
372 have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser
373 of a business or stock of goods fails to withhold the purchase money as required above, they
374 shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid that
375 were incurred by the business operation of the former owner. In no event, however, shall the tax,
376 penalties, and interest due by the purchaser be more than the purchase price paid for the business
377 or stock of goods.

378
379 Section 17. [*Disposition of Communications Sales and Use Tax Revenue;*
380 *Communications Sales and Use Tax Trust Fund; Localities' Share.*]

381 A. There is hereby created in the [Department of the Treasury] a special nonreverting
382 fund which shall be known as the [Communications Sales and Use Tax Trust Fund (the Fund)].
383 The Fund shall be established on the books of the [Comptroller] and any funds remaining in the
384 Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund.
385 Interest earned on the funds shall be credited to the Fund. After transferring moneys from the
386 Fund to the [Department of Taxation] to pay for the direct costs of administering this Act, the
387 moneys in the Fund shall be allocated to the state's counties, cities, and towns, and distributed in
388 accordance with subsection C, after the payment for the [telephone relay service center] is made
389 to the [Department of Deaf and Hard-of-Hearing] in accordance with the provisions of [insert
390 citation] and of any franchise fee amount due to localities in accordance with any cable franchise
391 in effect as of [insert date].

392 B. The localities' share of the net revenue distributable under this section among the
393 counties, cities, and towns shall be apportioned by the [Tax Commissioner] and distributed as
394 soon as practicable after the close of each month during which the net revenue was received into
395 the Fund. The distribution of the localities' share of such net revenue shall be computed with
396 respect to the net revenue received in the state treasury during each month.

397 C. The net revenue distributable among the counties, cities, and towns shall be
398 apportioned and distributed monthly during the remainder of [insert fiscal year] and during each
399 subsequent fiscal year according to [the percentage of telecommunications and television cable
400 funds (local consumer utility tax on landlines and wireless, E911, business license tax in excess
401 of 0.5%, cable franchise fee, video programming excise tax, local consumer utility tax on cable
402 television] they received respectively in [insert fiscal year] from local tax rates adopted on or
403 before [insert date]. An amount equal to the total franchise fee paid to each locality with a cable
404 franchise existing on the effective date of this section at the rate in existence on [insert date],
405 shall be subtracted from the amount owed to such locality prior to the distribution of moneys
406 from the Fund.

407 D. For the purposes of the [Comptroller] making the required transfers, the [Tax
408 Commissioner] shall make a written certification to the [Comptroller] no later than the [twenty-
409 fifth of each month] certifying the communications sales and use tax revenues generated in the
410 preceding month. Within [three calendar days] of receiving such certification, the [Comptroller]
411 shall make the required transfers to the [Communications Sales and Use Tax Trust Fund].

412 E. If errors are made in any distribution, or adjustments are otherwise necessary, the
413 errors shall be corrected and adjustments made in the distribution for the next month or for
414 subsequent months.

415
416 Section 18. [*Enhanced 911 Service (E911) Tax Definitions.*] As used in Sections 18 and
417 19 of this Act:

418 (1) "Access lines" are defined to include residence and business telephone lines and
419 other switched (packet or circuit) lines connecting the customer premises to the public switched
420 telephone network for the transmission of outgoing voice-grade-capable telecommunications
421 services. Centrex, PBX or other multistation telecommunications services will incur an E911 tax
422 charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous
423 unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate
424 Interface services will be charged five E911 tax charges for every ISDN Primary Rate Interface
425 network facility established by the customer. Other channelized services in which each voice-
426 grade channel is controlled by the telecommunications provider shall be charged one tax for each
427 line that allows simultaneous unrestricted outward dialing to the public switched telephone
428 network. Access lines do not include local, state, and federal government lines; access lines used

429 to provide service to users as part of the state Universal Service Plan; interstate and intrastate
430 dedicated WATS lines; special access lines; off premises extensions; official lines internally
431 provided and used by providers of telecommunications services for administrative, testing,
432 intercept, coin, and verification purposes; and commercial mobile radio service.

433 (2) "Automatic location identification" or "ALI" means a telephone network capability
434 that enables the automatic display of information defining the geographical location of the
435 telephone used to place a wireline 911 call.

436 (3) "Automatic number identification" or "ANI" means a telephone network capability
437 that enables the automatic display of the telephone number used to place a wireline 911 call.

438 (4) "Centrex" means a business telephone service offered by a local exchange company
439 from a local central office; a normal single line telephone service with added custom calling
440 features including but not limited to intercom, call forwarding, and call transfer.

441 (5) "Communications services provider" means the same as provided in Section 2 of this
442 Act.

443 (6) "Enhanced 911 service" or "E911" means a service consisting of telephone network
444 features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by
445 dialing the digits "911." Such service automatically directs 911 emergency telephone calls to the
446 appropriate PSAPs by selective routing based on the geographical location from which the
447 emergency call originated, and provides the capability for ANI and ALI features.

448 (7) "ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full
449 64,000 bits per second. One of the channels is generally used to carry signaling information for
450 the 23 other channels.

451 (8) "Network Access Register" means a central office register associated with Centrex
452 service that is required in order to complete a call involving access to the public switched
453 telephone network outside the confines of that Centrex company. Network Access Register may
454 be incoming, outgoing, or two-way.

455 (9) "PBX" means public branch exchange and is telephone switching equipment owned
456 by the customer and located on the customer's premises.

457 (10) "PBX trunk" means a connection of the customer's PBX switch to the central office.

458 (11) "Public Safety Answering Point" or "PSAP" means a communications facility
459 equipped and staffed on a 24 hour basis to receive and process 911 calls.

460

461 Section 19. [*Enhanced 911 Service (E911) Tax.*]

462 A. There is hereby imposed a monthly tax of [\$0.75] on the end user of each access line
463 of the telephone service or services provided by a communications services provider. However,
464 no such tax shall be imposed on federal, state, and local government agencies or on consumers of
465 mobile telecommunications services (CMRS) as defined in the federal Mobile
466 Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended. The revenues shall be collected
467 and remitted monthly by the communications services provider to the [Department] and
468 deposited into the [Communications Sales and Use Tax Trust Fund]. This tax shall be subject to
469 the notification and jurisdictional provisions of subsection B of this Section 19 of this Act.

470 B. If a customer believes that an amount of tax or an assignment of place of primary use
471 or taxing jurisdiction included on a billing is erroneous, the customer shall notify the
472 communications services provider in writing. The customer shall include in this written
473 notification the street address for the customer's place of primary use or taxing jurisdiction, the
474 account name and number for which the customer seeks a correction, a description of the error
475 asserted by the customer, and any other information that the communications services provider
476 reasonably requires to process the request. Within [15 days] of receiving a notice under this

477 section, the communications services provider shall review its records within an additional [15
478 days] to determine the customer’s taxing jurisdiction. If this review shows that the amount of tax
479 or assignment of place of primary use or taxing jurisdiction is in error, the communications
480 services provider shall correct the error and refund or credit the amount of tax erroneously
481 collected from the customer for a period of up to [two years]. If this review shows that the
482 amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the
483 communications services provider shall provide a written explanation to the customer. The
484 procedures in this section shall be the first course of remedy available to customers seeking
485 correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other
486 compensation for taxes erroneously collected by the communications services provider, and no
487 cause of action based upon a dispute arising from such taxes shall accrue until a customer has
488 reasonably exercised the rights and procedures set forth in this subsection. For the purposes of
489 this subsection, the terms “customer” and “place of primary use” shall have the same meanings
490 provided in Section 2 of this Act.

491 C. For the purpose of compensating a communications services provider for accounting
492 for and remitting the tax levied by this section, each communications services provider shall be
493 allowed [3% of the amount of tax revenues due and accounted for] in the form of a deduction in
494 submitting the return and remitting the amount due.

495

496 Section 20. [*Severability.*] [Insert severability clause.]

497

498 Section 21. [*Repealer.*] [Insert repealer clause.]

499

500 Section 22. [*Effective Date.*] [Insert effective date.]