

FIRST REGULAR SESSION

HOUSE BILL NO. 209

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOPER (120).

Read 1st time January 12, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0648L.011

AN ACT

To repeal section 67.1846, RSMo, and to enact in lieu thereof ten new sections relating to assessment and collection of various taxes on telecommunications companies.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 67.1846, RSMo, is repealed and ten new sections enacted in lieu
2 thereof, to be known as sections 67.1846, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089,
3 92.092, 92.095, and 92.098, to read as follows:

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political subdivision
2 of any obligations under an existing franchise agreement in effect on May 1, 2001. Nothing in
3 sections 67.1830 to 67.1846 will apply to that portion of any ordinance passed prior to May 1,
4 2001, which establishes a street degradation fee. Nothing in sections 67.1830 to 67.1846 shall
5 be construed as limiting the authority of county highway engineers or relieving public utility
6 right-of-way users from any obligations set forth in chapters 229 to 231, RSMo. Nothing in
7 sections 67.1830 to 67.1846 shall be deemed to relieve a public utility right-of-way user of the
8 provisions of an existing franchise, franchise fees, license or other agreement or permit in effect
9 on May 1, 2001. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision
10 or public utility right-of-way user from renewing or entering into a new or existing franchise, as
11 long as all other public utility right-of-way users have use of the public right-of-way on a
12 nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846 shall prevent a grandfathered
13 political subdivision from enacting new ordinances, including amendments of existing
14 ordinances, charging a public utility right-of-way user a fair and reasonable linear foot fee or
15 antenna fee or from enforcing or renewing existing linear foot ordinances for use of the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 right-of-way, provided that the public utility right-of-way user either:

17 (1) Is entitled under the ordinance to a credit for any amounts paid as business license
18 taxes or gross receipts taxes; or

19 (2) Is not required by the political subdivision to pay the linear foot fee if the public
20 utility right-of-way user is paying gross receipts taxes.

21

22 For purposes of this section, a "grandfathered political subdivision" is any political subdivision
23 which has, prior to May 1, 2001, enacted one or more ordinances reflecting a policy of imposing
24 any linear foot fees on any public utility right-of-way user, including ordinances which were
25 specific to particular public right-of-way users. Any existing ordinance or new ordinance passed
26 by a grandfathered political subdivision providing for payment of the greater of a linear foot fee
27 or a gross receipts fee shall be enforceable only with respect to the linear foot fee.

28 2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from
29 enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales
30 tax, occupation tax, franchise tax or franchise fee, property tax, **simplified municipal**
31 **telecommunications business license tax**, or other similar tax, to the extent consistent with
32 federal law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from
33 enacting, enforcing or renewing provisions of an ordinance to require a gross receipts tax
34 pursuant to chapter 66, chapter 92, or chapter 94, RSMo. For purposes of this subsection, the
35 term "franchise fee" shall mean "franchise tax".

**92.074. Sections 92.074 to 92.098 shall be known as the "Municipal
2 Telecommunications Business License Tax Simplification Act".**

**92.077. As used in sections 92.074 to 92.098, unless the context clearly requires
2 otherwise, the following terms mean:**

3 (1) **"Business license tax", any tax, including any fee, charge, or assessment in the
4 nature of a tax, assessed by a municipality on a telecommunications company for the
5 privilege of doing business within the borders of such municipality, and specifically
6 including any tax assessed on a telecommunications company pursuant to this chapter or
7 chapter 66 or 94, RSMo, and any occupational license tax, gross receipts tax, franchise tax,
8 or similar tax, but shall not include any state or municipal sales tax imposed under sections
9 144.010 to 144.525, RSMo, or any municipal right of way usage fee imposed under 47
10 U.S.C. Section 253(c) or sections 67.1830 to 67.1846, RSMo;**

11 (2) **"Director", the director of the department of revenue;**

12 (3) **"Gross receipts", the amount paid for the act or privilege of originating or
13 receiving telecommunications in a municipality and for all services and equipment
14 provided in connection with such origination or reception by a retailer, valued in money**

15 regardless of whether paid in money or otherwise, and determined without any deduction
16 for costs;

17 (4) "Municipal", of or relating to a municipality;

18 (5) "Municipality", any city or county which, prior to August 28, 2005, was
19 authorized by this chapter or chapter 66 or 94, RSMo, or other applicable state statute to
20 assess a business license tax on telecommunications companies doing business within its
21 borders;

22 (6) "Person", the same meaning as provided in subdivision (6) of subsection 1 of
23 section 144.010, RSMo;

24 (7) "Sale" or "sales", the same meaning as provided in subdivision (9) of subsection
25 1 of section 144.010, RSMo;

26 (8) "Sales at retail", the acquisition, consumption, or use of telecommunications
27 through a sale at retail as provided in subdivision (10) of subsection 1 of section 144.010,
28 RSMo;

29 (9) "Simplified municipal telecommunications business license tax" or "SMTBLT",
30 the tax authorized under sections 92.074 to 92.098 and administered, collected, and
31 distributed by the director;

32 (10) "Telecommunications company", any company doing business in this state
33 that provides telecommunications taxable under chapter 144, RSMo.

92.080. Notwithstanding any provisions of this chapter or chapter 66 or 94 to the
2 contrary, beginning January 1, 2006, no municipality may impose any business license tax
3 on a telecommunications company except as specified in sections 92.074 to 92.098.

92.083. After August 28, 2005, any municipality may impose a simplified municipal
2 telecommunications business license tax on a telecommunications company for the privilege
3 of doing business within its borders. The SMTBLT shall be imposed by an ordinance
4 adopted by the municipality after August 28, 2005, and filed with the director. Such
5 ordinance shall not become effective until the later of the following:

6 (1) The first day of the calendar quarter at least sixty days after filing the ordinance
7 with the director; or

8 (2) January 1, 2006.

92.086. If a municipality, prior to January 1, 2005, assessed any
2 telecommunications company a business license tax based upon a percentage of the
3 company's gross receipts, any new SMTBLT ordinance filed by such a municipality may
4 provide for a SMTBLT to be imposed based upon a percentage of the company's gross
5 receipts from the sale or resale of telecommunications which are subject to sales tax under
6 chapter 144, RSMo. The provisions of subdivision (3) of subsection 12 of section 32.087,

7 RSMo, shall apply to any ordinance imposing the SMTBLT.

2 **92.089.** Any telecommunications company is hereby authorized to pass through to
3 its retail customers all or part of the SMTBLT or amount paid to any municipality only if
4 the company specifically itemizes the tax on the customer's bill as a simplified municipal
telecommunications business license tax or SMTBLT.

2 **92.092. 1.** Beginning January 1, 2006, the director shall collect, administer, and
3 distribute all SMTBLT revenues. The director is authorized to promulgate rules to
4 establish the appropriate procedures for collecting, administering, and distributing any
5 SMTBLT, and the provisions of section 144.140, RSMo, shall apply. Any rule or portion
6 of a rule, as that term is defined in section 536.010, RSMo, that is created under the
7 authority delegated in this section shall become effective only if it complies with and is
8 subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
9 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
10 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
11 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
12 then the grant of rulemaking authority and any rule proposed or adopted after August 28,
2005, shall be invalid and void.

13 **2.** A telecommunications company shall file a quarterly return with the director
14 along with an attached schedule setting forth the total amount of gross receipts for such
15 quarter and the amount of the SMTBLT collected by the municipality from the company.
16 The director shall distribute the appropriate amounts, as provided in subsection 3 of this
17 section, to the municipalities. For its collection, administration, and distribution functions,
18 the department of revenue shall retain a two percent collection fee on all funds collected
19 and distributed and related interest. In no event shall the director fail to distribute the
20 collected funds to a municipality more than thirty days after the date of collection.

21 **3.** During the period after August 28, 2005, but before January 1, 2006, the director
22 shall publish a list of the municipalities which have enacted, prior to August 28, 2005,
23 ordinances imposing a municipal business license tax on any telecommunications company.
24 The list shall contain the following:

- 25 (1) Name of the municipality imposing the tax;
26 (2) Name of the tax as denoted by the municipality;
27 (3) Citation to the municipal code provisions imposing the tax; and
28 (4) Percentage of gross receipts.

29

30 In compiling the list, the director shall collect information from telecommunications
31 companies, municipalities, municipal codes, and other reliable sources.

32 **4. The provisions of section 144.140, RSMo, shall apply to the tax imposed under**
33 **sections 92.074 to 92.098.**

34 **5. Within sixty days after August 28, 2005, each telecommunications company in**
35 **this state shall provide the director and the state auditor with the amount of municipal**
36 **business license taxes which it has paid to each municipality during the previous four**
37 **quarters and with an itemized list establishing the company's gross receipts for the**
38 **previous four quarters for each category of gross receipts upon which a sales tax has been**
39 **paid.**

40 **6. The director shall, in consultation with the state auditor, adjust the gross receipts**
41 **percentage which a particular municipality receives in order to equalize the amount**
42 **received before and after passage of the SMTBLT, excluding the collection fee. The**
43 **director shall establish a formula or percentage table to ensure revenue neutrality of a**
44 **SMTBLT.**

45 **7. Notwithstanding the provisions of subsection 6 of this section, the maximum rate**
46 **of taxation for any municipality shall not exceed:**

47 **(1) For the period beginning January 1, 2006, and ending December 31, 2007, five**
48 **percent;**

49 **(2) For the period beginning January 1, 2008, and ending December 31, 2009, three**
50 **percent; and**

51 **(3) For any period beginning on or after January 1, 2010, one percent.**

52 **8. The director shall have the sole authority to audit any telecommunications**
53 **company and shall be provided access to any telecommunications company's books,**
54 **revenue records, and other applicable records to ascertain whether the company is**
55 **accurately paying the SMTBLT.**

56 **9. A cause of action for nonpayment of any SMTBLT shall only be brought by the**
57 **municipality imposing such tax and may only be brought within three years of the due date**
58 **for payment.**

92.095. In the event any telecommunications company, prior to August 28, 2005,
2 **failed to pay any amount to a municipality based on a good faith belief that:**

3 **(1) It was not a telephone company covered by the municipal business license tax**
4 **ordinance or did not provide telephone service as stated in such ordinance and therefore**
5 **owned no business license tax; or**

6 **(2) Certain categories of its revenues did not qualify under the definition or**
7 **wording of the ordinance as revenues upon which gross receipts business license taxes**
8 **should be calculated;**

9 **such company shall not be liable to the municipality for payment of disputed amounts of**

10 **business license taxes. This section shall not apply to any SMTBLT imposed after August**
11 **28, 2005. Any cause of action begun by any municipality prior to August 28, 2005, for**
12 **nonpayment of municipal business license taxes by a telecommunications company shall**
13 **be immediately dismissed with prejudice. Any audit brought on behalf of such**
14 **municipality for such purpose shall be immediately ceased.**

2 **92.098. Notwithstanding the provisions of section 1.140, RSMo, the provisions of**
3 **sections 92.074 to 92.098 shall be nonseverable, and if any provision is for any reason held**
4 **to be invalid, such decision shall invalidate all of the remaining provisions of such sections.**