

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 209**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Ways & Means March 30, 2005, with recommendation that House Committee Substitute for House Bill No. 209 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

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**AN ACT**

To amend chapters 71 and 92, RSMo, by adding thereto nine new sections relating to assessment and collection of various taxes on telecommunications companies.

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

Section A. Chapters 71 and 92, RSMo, are amended by adding thereto nine new sections, to be known as sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and 92.098, to read as follows:

**71.675. Notwithstanding any other provision of law to the contrary, no city or town may bring or maintain any action in federal or state court in this State as a representative member of a class to enforce or collect any business license tax imposed on a telecommunications company.**

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

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

**(1) "Business license tax", any tax, including any fee, charge, or assessment in the nature of a tax, assessed by a municipality on a telecommunications company for the privilege of doing business within the borders of such municipality, and specifically includes any tax assessed on a telecommunications company by a municipality under section 66.300, RSMo, and section 80.090, RSMo, section 92.073, section 94.110, 94.270, or 94.360, RSMo, or under authority granted in its charter, as well as an occupation license**

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.

9 tax, gross receipts tax, franchise tax, or similar tax, but shall not include:

10 (a) Any state or municipal sales tax imposed under sections 144.010 to 144.525,  
11 RSMo; or

12 (b) Any municipal right-of-way usage fee imposed under the authority of a  
13 municipality's police powers under Section 253(c) of the Federal Telecommunications Act  
14 of 1996, or under sections 67.1830 to 67.1846, RSMo; or

15 (c) Any tax or fee levied for emergency services under section 190.292, 190.305, or  
16 190.325, RSMo;

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

18 (3) "Municipal", of or relating to a municipality;

19 (4) "Municipality", any city, county, town, or village in Missouri which is entitled  
20 by authority of section 66.300, RSMo, section 80.090, RSMo, section 92.073, section 94.110,  
21 94.270, or 94.360, RSMo, or under authority granted in its charter to assess a business  
22 license tax on telecommunications companies doing business within its borders;

23 (5) "Telecommunications company", any company doing business in this state that  
24 provides telecommunications service;

25 (6) "Telecommunications service", the same meaning as such term is defined in  
26 section 144.010, RSMo. The term telephone company, as used in sections 94.110, 94.270,  
27 and 94.360, RSMo, shall have the same meaning as telecommunications company as  
28 defined in this section.

92.080. Notwithstanding any provisions of this chapter or chapter 66, 80, or 94,  
2 RSMo, or the provisions of any municipal charter, after August 28, 2005, no municipality  
3 may impose any business license tax, tower tax, or antennae tax on a telecommunications  
4 company except as specified in sections 92.074 to 92.098.

92.083. 1. If any city, county, village, or town has imposed a business license tax  
2 on a telecommunications company, as authorized in this chapter, or chapter 66, 80, or 94,  
3 RSMo, or under the authority granted in its charter, the terms used in such ordinance shall  
4 be construed to have the meanings set forth in this section, regardless of any contrary  
5 definition in the ordinance:

6 (1) "Gross receipts" means all receipts from the retail sale of telecommunications  
7 service taxable under section 144.020, RSMo;

8 (2) "Telephone service", "telecommunications service", "telecommunications",  
9 "local exchange service", "local exchange telephone transmission service", "exchange  
10 telephone service" or similar terms means telecommunications service as defined in section  
11 92.077.

12 2. Nothing in this section shall have the effect of repealing any existing ordinance

13 imposing a business license tax on a telecommunications company; provided that a city  
14 with an ordinance in effect prior to August 28, 2005, complies with the provisions of section  
15 92.086.

16 3. Any business license tax imposed on a telecommunications company after August  
17 28, 2005, shall be imposed on the retail sale of telecommunications service.

18 92.086. 1. On or before January 1, 2006, the director shall publish a list of the  
19 municipalities which have, prior to August 28, 2005, enacted ordinances imposing a  
20 business license tax on a telecommunications company. The list shall contain:

21 (1) The name of the municipality imposing the tax;

22 (2) The name of the tax as denoted by the municipality;

23 (3) The citation to the municipal code provisions imposing the tax; and

24 (4) The percentage of gross receipts.

25 The director shall not be required to include any figures for the percentage of gross  
26 receipts if the municipality in question at the time of August 28, 2005, had an ordinance  
27 which imposed a flat fee instead of a fee based on gross receipts as its business license tax.  
28 In compiling the list, the director shall collect information from telecommunications  
29 companies, municipalities, municipal codes, and other reliable sources.

30 2. On or before February 1, 2006, all telecommunications companies in Missouri  
31 shall provide the director and the state auditor with the amount of municipal business  
license tax which they paid each Missouri municipality identified by the director in  
accordance with subsection 1 of this section for the previous four quarters. On or before  
February 1, 2006, all telecommunications companies in Missouri shall provide the director  
and the state auditor with an itemized list establishing their gross receipts for the previous  
four quarters for each category of gross receipts in each municipality identified by the  
director in accordance with subsection 1 of this section upon which a sales tax is paid.

3. Beginning on July 1, 2006, the director shall henceforth collect, administer, and  
distribute telecommunications business license tax revenues in accordance with the  
provisions of sections 92.074 to 92.098.

4. Notwithstanding the provisions of any municipal business license tax ordinance,  
all business license taxes shall be based solely and exclusively on those gross receipts of  
telecommunications companies for the retail sale of telecommunications services which are  
subject to taxation under sections 144.010 and 144.020, RSMo. Any provisions in any  
municipal taxing ordinances which provide different definitions, rules, or provisions are  
expressly preempted and are null and void.

5. The director is authorized to promulgate regulations to establish the appropriate

32 procedures for collecting, administering, and distributing such taxes. A  
33 telecommunications company shall file a quarterly return with the director with an  
34 attached schedule setting forth the total amount of taxable gross receipts for the quarter  
35 and the amount of business license tax due to each municipality. The director shall  
36 distribute the appropriate amounts, as set forth in this section, to the municipalities. In  
37 exchange for its collection, administration, and distribution functions, the department of  
38 revenue shall retain a collection fee of up to one percent (not to exceed the actual costs  
39 incurred) on all funds collected and distributed and shall be allowed to collect the interest  
40 off such funds during the time between collection and distribution. In no event shall the  
41 director fail to distribute the collected funds to a municipality more than thirty days after  
42 the collection of the funds.

43         **6. It is the intent of the general assembly that sections 92.074 to 92.098 comply with**  
44 **Article X, Section 22 of the Missouri Constitution, so that the amount distributed during**  
45 **the first year by the director to each municipality shall be the same amount received by the**  
46 **municipality for the last four quarters as set forth in subsection 2 of this section. Because**  
47 **business license taxes shall now be based on the gross receipts subject to the sales tax, it is**  
48 **anticipated that the base of the existing business license taxes in most cases shall be**  
49 **broadened, so in order to comply with Article X, Section 22 of the Missouri Constitution,**  
50 **the state auditor shall adjust the gross receipts percentage rate for each municipality**  
51 **identified by the director in accordance with subsection 2 of this section so that the amount**  
52 **received in total from all telecommunications companies as defined herein, collectively,**  
53 **before and immediately after enactment remains the same in each municipality. Any**  
54 **percentages in any ordinance which are contrary to that established by the director herein**  
55 **are null and void. Based upon the rate information received from the state auditor under**  
56 **this section, the director shall, no later than April 1, 2006, promulgate and publish the**  
57 **revenue neutral rates to be applied in each municipality. Such tax rates shall be the**  
58 **applicable business license tax rate for bills rendered after July 1, 2006.**

59         **7. On or before April 1, 2007, the director, in consultation with the state auditor**  
60 **and municipalities, shall examine revenues collected and forecast whether a shortfall or**  
61 **excess in municipal revenues for each municipality is likely to occur for the fiscal year**  
62 **ending June 30, 2007, due to data reporting errors or other errors in the calculation of the**  
63 **revenue neutral tax rate. If a shortfall or excess is expected, the director, after review and**  
64 **comment from municipalities and telecommunications companies, shall recommend a one**  
65 **time adjustment in the rate in such municipalities. Such tax rate adjustment, if necessary,**  
66 **shall apply to bills issued after July 1, 2007.**

67         **8. The director shall be notified in writing within thirty days of any change in the**

68 municipal business license tax rate adopted by a municipality. The director shall  
69 promulgate such rate changes, but such rate changes may only take effect on the first day  
70 of a calendar quarter and only after a minimum of ninety days notice from the director to  
71 a telecommunications company. Any subsequent increase in the business license tax rate  
72 passed through an ordinance by a municipality which is above that rate as established by  
73 the state auditor under subsection 6 of this section shall be passed by a majority vote of the  
74 citizen's in that municipality. No municipal tax rate shall exceed the cap provided in  
75 subsection 9 of this section.

76 **9.** Notwithstanding the provisions of subsections 3 to 8 of this section or any other  
77 provision of law to the contrary, for any municipality not subject to the provisions of  
78 subsection 10 of this section, the maximum rate of taxation on gross receipts shall not  
79 exceed:

80 (1) For bills rendered during the period beginning July 1, 2006, and ending  
81 December 31, 2007, five percent.

82 (2) For bills rendered on or after January 1, 2008, three percent.

83 **10.** (1) Any municipality which prior to November 4, 1980, had an ordinance  
84 imposing a business license tax on telecommunications companies which specifically  
85 included the words "wireless", "cell phones", or "mobile phones" in its business license  
86 tax ordinance as revenues upon which a business license tax could be imposed, and had not  
87 limited its tax to local exchange telephone service or landlines, and had taken affirmative  
88 action to collect such tax from wireless telecommunications providers prior to January 15,  
89 2005, shall not be required to adjust its business license tax rate as provided in subsection  
90 6 of this section and shall not be subject to the provisions of subsection 9 of this section.

91 (2) Any municipality which has an ordinance or an amendment to an ordinance  
92 imposing a business license tax on telecommunications companies which was authorized  
93 or amended by a public vote subsequent to November 4, 1980, and such authorization  
94 specifically included the terms "wireless", "cell phones", or "mobile telephones" as  
95 revenues upon which a business license tax could be imposed, and had not limited its tax  
96 to local exchange telephone service or landlines, and had taken affirmative action to collect  
97 such tax from wireless telecommunications providers prior to January 15, 2005, shall not  
98 be required to adjust its business license tax rate as provided in subsection 6 of this section  
99 and shall not be subject to the provisions of subsection 9 of this section.

100 **11.** The director shall have the sole authority to audit any telecommunications  
101 company and such audits shall be performed in accordance with the rules and procedures  
102 governed by chapter 144, RSMo.

103 **12.** The statute of limitations shall be three years for the alleged nonpayment or

104 underpayment of the business license tax.

105           **13. Any telecommunications company is authorized to pass through to its retail**  
106 **customers all or part of the business license tax.**

107           **14. The provisions of subsection 5 of section 144.190, RSMo, and subdivision (3) of**  
108 **subsection 12 of section 32.087, RSMo, shall apply to the tax imposed under sections 92.074**  
109 **to 92.098.**

110           **15. Unless specifically stated otherwise in sections 92.074 to 92.098, taxpayer**  
111 **remedies, enforcement mechanisms, tax refunds, tax protests, assessments, and all other**  
112 **procedures shall be the same as those provided in chapter 144, RSMo.**

113           **16. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
114 **that is created under the authority delegated in this section shall become effective only if**  
115 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
116 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
117 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**  
118 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**  
119 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
120 **adopted after the effective date of this section, shall be invalid and void.**

**92.089. 1. The general assembly finds and declares it to be the policy of the state**  
2 **of Missouri that costly litigation which have or may be filed by Missouri municipalities**  
3 **against telecommunications companies, concerning the application of certain business**  
4 **license taxes to certain telecommunications companies, and to certain revenues of those**  
5 **telecommunications companies, as set forth below, is detrimental to the economic well**  
6 **being of the state, and the claims of the municipal governments regarding such business**  
7 **licenses have neither been determined to be valid nor liquidated. The general assembly**  
8 **further finds and declares that the resolution of such uncertain litigation, the uniformity,**  
9 **and the administrative convenience and cost savings to municipalities resulting from, and**  
10 **the revenues which will or may accrue to municipalities in the future as a result of the**  
11 **enactment of sections 92.074 to 92.098 are full and adequate consideration to**  
12 **municipalities, as the term "consideration" is used in Article III, Section 39(5) of the**  
13 **Missouri Constitution, for the immunity and dismissal of lawsuits outlined in subsection**  
14 **2 of this section.**

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

17           **(1) It was not a telephone company covered by the municipal business license tax**  
18 **ordinance, or the statute authorizing the enactment of such taxing ordinance, or did not**  
19 **provide telephone service as stated in the business license tax ordinance, and therefore**

20 owed no business license tax to the municipality; or

21 (2) That certain categories of its revenues did not qualify under the definition or  
22 wording of the ordinance as gross receipts or revenues upon which business license taxes  
23 should be calculated;

24

25 such a telecommunications company is entitled to full immunity from, and shall not be  
26 liable to a municipality for, the payment of the disputed amounts of business license taxes,  
27 up to and including August 28, 2005. However, such immunity and release from liability  
28 shall not apply to any business license tax imposed in accordance with sections 92.074 to  
29 92.098 after July 1, 2006. If any municipality, prior to August 28, 2005, has brought  
30 litigation or caused an audit of back taxes for the nonpayment by a telecommunications  
31 company of municipal business licenses taxes, it shall immediately dismiss such lawsuit  
32 with prejudice and shall cease and desist from continuing any audit.

92.092. All provisions of sections 92.074 to 92.098 are so essentially and inseparably  
2 connected with, and so dependent upon, each other that no such provision would be  
3 enacted without all others. If a court of competent jurisdiction enters a final judgment on  
4 the merits that is not subject to appeal and that declares any provision or part of sections  
5 92.974 to 92.098 unconstitutional or unenforceable then sections 92.074 to 92.098, in their  
6 collective entirety, are invalid and shall have no legal effect as of the date of such judgment.  
7 In such event, both telecommunications companies and municipalities shall have the same  
8 rights as existed before the enactment of sections 92.074 to 92.098, but shall not be entitled  
9 to reimbursement, or required to pay reimbursement, for any sums paid in the good faith  
10 belief in the validity and constitutionality of sections 92.074 to 92.098.

92.098. The provisions of section 71.680, RSMo, are severable from the provisions  
2 of sections 92.074 to 92.092. If any portion of sections 92.074 to 92.092 is declared  
3 unconstitutional or the application of any part of sections 92.074 to 92.092 to any person  
4 or circumstance is held invalid, section 71.680, RSMo, and its applicability to any person  
5 or circumstance shall remain valid and enforceable. If any portion of section 71.680,  
6 RSMo, is declared unconstitutional or the application of any part of section 71.680, RSMo,  
7 to any person or circumstance is held invalid, sections 92.074 to 92.092 and its applicability  
8 to any person or circumstance shall remain valid and enforceable.