

SENATE SUBSTITUTE

FOR

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FOR

HOUSE BILL NO. 209

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.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Chapters 71 and 92, RSMo, are amended by adding
2 thereto nine new sections, to be known as sections 71.675,
3 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and
4 92.098, to read as follows:

5 71.675. 1. Notwithstanding any other provision of law to
6 the contrary, no city or town shall bring any action in federal
7 or state court in this state as a representative member of a
8 class to enforce or collect any business license tax imposed on a
9 telecommunications company. A city or town may, individually or
10 as a single plaintiff in a multiple-plaintiff lawsuit, bring an
11 action in federal or state court in this state to enforce or
12 collect any business license tax imposed on a telecommunications
13 company.

14 2. Nothing in this section shall be construed to preclude
15 any taxpayer from initiating an action in federal or state court

1 as a representative member of a class seeking injunctive relief
2 against the Missouri department of revenue to enforce the
3 imposition, assessment, or collection of the business license tax
4 provided under sections 92.074 to 92.098, RSMo.

5 92.074. Sections 92.074 to 92.098 shall be known as the
6 "Municipal Telecommunications Business License Tax Simplification
7 Act".

8 92.077. As used in sections 92.074 to 92.098, unless the
9 context clearly requires otherwise, the following terms mean:

10 (1) "Business license tax", any tax, including any fee,
11 charge, or assessment in the nature of a tax, assessed by a
12 municipality on a telecommunications company for the privilege of
13 doing business within the borders of such municipality, and
14 specifically includes any tax assessed on a telecommunications
15 company by a municipality under section 66.300, RSMo, and section
16 80.090, RSMo, section 92.073, section 94.110, 94.270, or 94.360,
17 RSMo, or under authority granted in its charter, as well as an
18 occupation license tax, gross receipts tax, franchise tax, or
19 similar tax, but shall not include:

20 (a) Any state or municipal sales tax imposed under sections
21 144.010 to 144.525, RSMo; or

22 (b) Any municipal right-of-way usage fee imposed under the
23 authority of a municipality's police powers under Section 253(c)
24 of the Federal Telecommunications Act of 1996, or under sections
25 67.1830 to 67.1846, RSMo; or

26 (c) Any tax or fee levied for emergency services under
27 section 190.292, 190.305, 190.325, 190.335, or 190.430, RSMo, or
28 any tax authorized by the general assembly after August 28, 2005,

1 for emergency services;

2
3 (d) Any flat tax duly imposed on or before August 28, 2005;

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

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

6 (4) "Municipality", any city, county, town, or village in
7 Missouri entitled by authority of section 66.300, RSMo, section
8 80.090, RSMo, section 92.073, section 94.110, 94.270, or 94.360,
9 RSMo, or under authority granted in its charter to assess a
10 business license tax on telecommunications companies;

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

13 (6) "Telecommunications service", the same meaning as such
14 term is defined in section 144.010, RSMo. The term telephone
15 company, as used in sections 94.110, 94.270, and 94.360, RSMo,
16 shall have the same meaning as telecommunications company as
17 defined in this section.

18 92.080. Notwithstanding any provisions of this chapter or
19 chapter 66, 80, or 94, RSMo, or the provisions of any municipal
20 charter, after August 28, 2005, no municipality may impose any
21 business license tax, tower tax, or antennae tax on a
22 telecommunications company except as specified in sections 92.074
23 to 92.098.

24 92.083. 1. On or after July 1, 2006, if any city, county,
25 village, or town has imposed a business license tax on a
26 telecommunications company, as authorized in this chapter, or
27 chapter 66, 80, or 94, RSMo, or under the authority granted in
28 its charter, the terms used in such ordinance shall be construed,

1 for the purposes of section 92.074 to 92.098, to have the
2 meanings set forth in this section, regardless of any contrary
3 definition in the ordinance:

4 (1) "Gross receipts" means all receipts from the retail
5 sale of telecommunications service taxable under section 144.020,
6 RSMo, and from any retail customer now or hereafter exempt from
7 the state sales tax;

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

13 2. Nothing in this section shall have the effect of
14 repealing any existing ordinance imposing a business license tax
15 on a telecommunications company; provided that a city with an
16 ordinance in effect prior to August 28, 2005, complies with the
17 provisions of section 92.086.

18 3. Any business license tax imposed on a telecommunications
19 company after July 1, 2006, shall be imposed on the retail sale
20 of telecommunications service.

21 92.086. 1. On or before January 1, 2006, the director
22 shall publish a list of the municipalities which have, prior to
23 August 28, 2005, enacted ordinances imposing a business license
24 tax on a telecommunications company. The list shall contain:

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

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

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

1 (4) The percentage of gross receipts.

2
3 The director shall not be required to include any figures for the
4 percentage of gross receipts if the municipality in question at
5 the time of August 28, 2005, had an ordinance which imposed a
6 flat fee instead of a fee based on gross receipts as its business
7 license tax. In compiling the list, the director shall collect
8 information from telecommunications companies, municipalities,
9 municipal codes, and other reliable sources.

10 2. (1) On or before February 1, 2006, all
11 telecommunications companies in Missouri shall provide the
12 director and the state auditor with the amount of municipal
13 business license tax which they paid each Missouri municipality
14 identified by the director in accordance with subsection 1 of
15 this section for the previous four quarters. On or before
16 February 1, 2006, all telecommunications companies in Missouri
17 shall provide the director and the state auditor with an itemized
18 list establishing their gross receipts for the previous four
19 quarters for each category of gross receipts in each municipality
20 identified by the director in accordance with subsection 1 of
21 this section upon which a sales tax is paid;

22 (2) On or before February 1, 2006, each municipality shall
23 provide the director and state auditor with the total amount of
24 tax revenue collected for the previous fiscal year of taxable
25 gross receipts from telecommunications companies. Any
26 inconsistency or dispute arising from the information provided by
27 the municipalities and telecommunications companies shall be
28 resolved through an audit performed by the state auditor.

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

5 4. Notwithstanding the provisions of any municipal business
6 license tax ordinance, effective July 1, 2006, all business
7 license taxes shall be based solely and exclusively on those
8 gross receipts of telecommunications companies for the retail
9 sale of telecommunications services which are subject to taxation
10 under sections 144.010 and 144.020, RSMo. Any provisions in any
11 municipal taxing ordinances which provide different definitions,
12 rules, or provisions are expressly preempted and are null and
13 void.

14 5. The director is authorized to promulgate regulations to
15 establish the appropriate procedures for collecting,
16 administering, and distributing such taxes. A telecommunications
17 company shall file a quarterly return with the director with an
18 attached schedule setting forth the total amount of taxable gross
19 receipts for the quarter and the amount of business license tax
20 due to each municipality. The director shall distribute the
21 appropriate amounts, as set forth in this section, to the
22 municipalities. In exchange for its collection, administration,
23 and distribution functions, the department of revenue shall
24 retain a collection fee of up to one percent (not to exceed the
25 actual costs incurred) on all funds collected and distributed and
26 shall be allowed to collect the interest off such funds during
27 the time between collection and distribution. In no event shall
28 the director fail to distribute the collected funds to a

1 municipality more than thirty days after the collection of the
2 funds.

3 6. It is the intent of the general assembly that sections
4 92.074 to 92.098 comply with Article X, Section 22 of the
5 Missouri Constitution, so that the application of sections 92.074
6 to 92.098 shall have a revenue-neutral effect. Because business
7 license taxes shall now be based on the gross receipts subject to
8 the sales tax, it is anticipated that the base of the existing
9 business license taxes in most cases shall be broadened, so in
10 order to comply with Article X, Section 22 of the Missouri
11 Constitution, the municipality shall adjust the gross receipts
12 percentage rate identified by the director in accordance with
13 subsection 2 of this section so that the amount collectable, in
14 total from all telecommunications companies, excluding the
15 collection fee authorized in subsection 5 as defined herein,
16 before and immediately after enactment remains the same in each
17 municipality. If the determination is made by a municipality
18 that in order to comply with article X, section 22 of the
19 Missouri Constitution the gross receipts percentage rate must be
20 increased, such increase shall be passed by a majority vote of
21 the qualified voters voting in that municipality. The existing
22 tax base shall be an amount equal to the total amount of
23 telecommunication business license taxes collected by a
24 municipality for fiscal year 2005, increased by fifty percent of
25 the difference between such amount and the business license tax
26 receipts that would have been yielded by applying the gross
27 receipts percentage rate identified in accordance with subsection
28 1 of this section to the total gross receipts for all

1 telecommunications services provided by telecommunications
2 companies in such fiscal year attributable to the municipality.
3 Based upon the rate information received from the director under
4 this section, each municipality shall, no later than April 1,
5 2006, promulgate and publish the revenue neutral rates to be
6 applied in each municipality. Such tax rates shall be the
7 applicable business license tax rate for bills rendered on or
8 after July 1, 2006. Any percentages in any ordinance that are
9 contrary to that established by the municipality herein are null
10 and void. If any municipal business license tax ordinance as of
11 January 1, 2005, had a provision stating that the tax only
12 applied to business customers, the new calculated rate under this
13 chapter also shall apply only to business customers.

14 7. On or before April 1, 2007, the director, in
15 consultation with the state auditor and municipalities, shall
16 examine revenues collected and forecast whether a shortfall or
17 excess in municipal revenues for each municipality is likely to
18 occur for the fiscal year ending June 30, 2007, due to data
19 reporting errors or other errors in the calculation of the
20 revenue neutral tax rate. Section 32.057, RSMo, shall not
21 restrict the disclosure of information to perform such
22 consultation. If a shortfall or excess is expected, the
23 director, after review and comment from municipalities and
24 telecommunications companies, shall recommend a one time
25 adjustment in the rate in such municipalities. Such tax rate
26 adjustment, if necessary, shall apply to bills issued after July
27 1, 2007.

28 8. The director shall be notified in writing within thirty

1 days of any change in the municipal business license tax rate
2 adopted by a municipality. The director shall promulgate such
3 rate changes, but such rate changes may only take effect on the
4 first day of a calendar quarter and only after a minimum of
5 ninety days notice from the director to a telecommunications
6 company. Any subsequent increase in the business license tax
7 rate passed through an ordinance by a municipality which is above
8 that rate as established by the municipality under subsection 6
9 of this section shall be passed by a majority vote of the
10 qualified voters voting in that municipality. No municipal tax
11 rate shall exceed the cap provided in subsection 9 of this
12 section.

13 9. Notwithstanding the provisions of subsections 3 to 8 of
14 this section or any other provision of law to the contrary, for
15 any municipality not subject to the provisions of subsection 10
16 of this section, the maximum rate of taxation on gross receipts
17 shall not exceed five percent for bills rendered on or after July
18 1, 2006, except if the business license tax rate for any
19 municipality, as calculated in subsection 6 of this section, or
20 if necessary, subsection 7 of this section, is determined to be
21 greater than five percent, then, notwithstanding the provisions
22 of such subsections, the business license tax rates for such
23 municipality on and after July 1, 2006, shall be as follows:

24 (1) For bills rendered between July 1, 2006, and June 30,
25 2008, the rate shall be the actual adjusted rate as determined by
26 subsection 6 or this section, or, if necessary, subsection 7 of
27 this section;

28 (2) For bills rendered between July 1, 2008, and June 30,

1 2010, the rate shall be half of the difference between the rate
2 determined in subdivision (1) of this subsection and five
3 percent; and

4 (3) For all bills rendered on and after July 1, 2010, five
5 percent.

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

18 (2) Any municipality which has an ordinance or an amendment
19 to an ordinance imposing a business license tax on
20 telecommunications companies which was authorized or amended by a
21 public vote subsequent to November 4, 1980, and such
22 authorization specifically included the terms "wireless", "cell
23 phones", or "mobile telephones" as revenues upon which a business
24 license tax could be imposed, and had not limited its tax to
25 local exchange telephone service or landlines, and had taken
26 affirmative action to collect such tax from wireless
27 telecommunications providers prior to January 15, 2005, shall not
28 be required to adjust its business license tax rate as provided

1 in subsection 6 of this section and shall not be subject to the
2 provisions of subsection 9 of this section.

3 11. For purposes of sections 92.074 to 92.098, the director
4 and any municipality shall have the authority to audit any
5 telecommunications company. Notwithstanding the provisions of
6 section 32.057, RSMo, the director of revenue shall furnish any
7 municipality with information it requests to permit the
8 municipality to review and audit the payments of any
9 telecommunications company.

10 12. The statute of limitations shall be three years for the
11 alleged nonpayment or underpayment of the business license tax.

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

15 14. The provisions of subsection 5 of section 144.190,
16 RSMo, and subdivision (3) of subsection 12 of section 32.087,
17 RSMo, shall apply to the tax imposed under sections 92.074 to
18 92.098.

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

23 16. Any rule or portion of a rule, as that term is defined
24 in section 536.010, RSMo, that is created under the authority
25 delegated in this section shall become effective only if it
26 complies with and is subject to all of the provisions of chapter
27 536, RSMo, and, if applicable, section 536.028, RSMo. This
28 section and chapter 536, RSMo, are nonseverable and if any of the

1 powers vested with the general assembly pursuant to chapter 536,
2 RSMo, to review, to delay the effective date, or to disapprove
3 and annul a rule are subsequently held unconstitutional, then the
4 grant of rulemaking authority and any rule proposed or adopted
5 after the effective date of this section, shall be invalid and
6 void.

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

26 2. In the event any telecommunications company, prior to
27 July 1, 2006, failed to pay any amount to a municipality based on
28 a subjective good faith belief that either:

1 (1) It was not a telephone company covered by the municipal
2 business license tax ordinance, or the statute authorizing the
3 enactment of such taxing ordinance, or did not provide telephone
4 service as stated in the business license tax ordinance, and
5 therefore owed no business license tax to the municipality; or

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

10
11 such a telecommunications company is entitled to full immunity
12 from, and shall not be liable to a municipality for, the payment
13 of the disputed amounts of business license taxes, up to and
14 including July 1, 2006. However, such immunity and release from
15 liability shall not apply to any business license tax imposed in
16 accordance with subdivisions (1) and (2) of subsection 10 of
17 section 92.086 or sections 92.074 to 92.098 after July 1, 2006.

18 If any municipality, prior to July 1, 2006, has brought
19 litigation or caused an audit of back taxes for the nonpayment by
20 a telecommunications company of municipal business license taxes,
21 it shall immediately dismiss such lawsuit without prejudice and
22 shall cease and desist from continuing any audit, except those
23 cities described in subsection 10 of section 92.086.

24 92.092. All provisions of sections 92.074 to 92.089 are so
25 essentially and inseparably connected with, and so dependent
26 upon, each other that no such provision would be enacted without
27 all others. If a court of competent jurisdiction enters a final
28 judgment on the merits that is not subject to appeal and that

1 declares any provision or part of sections 92.974 to 92.089
2 unconstitutional or unenforceable then sections 92.074 to 92.089,
3 in their collective entirety, are invalid and shall have no legal
4 effect as of the date of such judgment. In such event, both
5 telecommunications companies and municipalities shall have the
6 same rights as existed before the enactment of sections 92.074 to
7 92.089, but shall not be entitled to reimbursement, or required
8 to pay reimbursement, for any sums paid in the good faith belief
9 in the validity and constitutionality of sections 92.074 to
10 92.089.

11 92.098. The provisions of section 71.675, RSMo, are
12 severable from the provisions of sections 92.074 to 92.092. If
13 any portion of sections 92.074 to 92.092 is declared
14 unconstitutional or the application of any part of sections
15 92.074 to 92.092 to any person or circumstance is held invalid,
16 section 71.675, RSMo, and its applicability to any person or
17 circumstance shall remain valid and enforceable. If any portion
18 of section 71.675, RSMo, is declared unconstitutional or the
19 application of any part of section 71.675, RSMo, to any person or
20 circumstance is held invalid, sections 92.074 to 92.092 and its
21 applicability to any person or circumstance shall remain valid
22 and enforceable.