

FIRST REGULAR SESSION

SENATE BILL NO. 529

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR VOGEL.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1941S.01I

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, with a severability clause.

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

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

(b) Any municipal right-of-way usage fee imposed under the authority of a

municipality's police powers under Section 253(c) of the Federal Telecommunications Act of 1996, or under sections 67.1830 to 67.1846, RSMo; or

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

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

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

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

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

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

92.080. Notwithstanding any provisions of this chapter or chapter 66, 80, or 94, RSMo, or the provisions of any municipal charter, after August 28, 2005, no municipality may impose any business license tax, tower tax, or antennae tax on a telecommunications 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 on a telecommunications company, as authorized in this chapter, or chapter 66, 80, or 94, RSMo, or under the authority granted in its charter, the terms used in such ordinance shall be construed to have the meanings set forth in this section, regardless of any contrary definition in the ordinance:

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

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

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

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

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

- (1) The name of the municipality imposing the tax;**
- (2) The name of the tax as denoted by the municipality;**
- (3) The citation to the municipal code provisions imposing the tax; and**
- (4) The percentage of gross receipts.**

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

2. On or before February 1, 2006, all telecommunications companies in Missouri 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 procedures for collecting, administering, and distributing such taxes. A telecommunications company shall file a quarterly return with the director with an attached schedule setting forth the total amount of taxable gross receipts for the quarter and the amount of business license tax due to each municipality. The

director shall distribute the appropriate amounts, as set forth in this section, to the municipalities. In exchange for its collection, administration, and distribution functions, the department of revenue shall retain a collection fee of up to one percent, not to exceed the actual costs incurred, on all funds collected and distributed and shall be allowed to collect the interest off such funds during the time between collection and distribution. In no event shall the director fail to distribute the collected funds to a municipality more than thirty days after the collection of the funds.

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

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

8. The director shall be notified in writing within thirty days of any change in the municipal business license tax rate adopted by a municipality. The director shall promulgate such rate changes, but such rate changes may only take effect on

the first day of a calendar quarter and only after a minimum of ninety days notice from the director to a telecommunications company. Any subsequent increase in the business license tax rate passed through an ordinance by a municipality which is above that rate as established by the state auditor under subsection 6 of this section shall be passed by a majority vote of the citizen's in that municipality. No municipal tax rate shall exceed the cap provided in subsection 9 of this section.

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

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

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

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

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

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

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

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

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

16. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter

536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or 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 of Missouri that costly litigation which have or may be filed by Missouri municipalities against telecommunications companies, concerning the application of certain business license taxes to certain telecommunications companies, and to certain revenues of those telecommunications companies, as set forth below, is detrimental to the economic well being of the state, and the claims of the municipal governments regarding such business licenses have neither been determined to be valid nor liquidated. The general assembly further finds and declares that the resolution of such uncertain litigation, the uniformity, and the administrative convenience and cost savings to municipalities resulting from, and the revenues which will or may accrue to municipalities in the future as a result of the passage of sections 92.074 to 92.098 are full and adequate consideration to municipalities, as the term "consideration" is used in article III, section 39(5) of the Missouri constitution, for the immunity and dismissal of lawsuits outlined in subsection 2 of this section.

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

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

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

such a telecommunications company is entitled to full immunity from, and shall not be liable to a municipality for, the payment of the disputed amounts of business license taxes, up to and including August 28, 2005. However, such immunity and release from liability shall not apply to any business license tax imposed in accordance with sections 92.074 to 92.098 after July 1, 2006. If any municipality, prior to August 28, 2005, has brought litigation or caused an audit

of back taxes for the nonpayment by a telecommunications company of municipal business licenses taxes, it shall immediately dismiss such lawsuit 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 connected with, and so dependent upon, each other that no such provision would be enacted without all others. If a court of competent jurisdiction enters a final judgment on the merits that is not subject to appeal and that declares any provision or part of sections 92.074 to 92.098 unconstitutional or unenforceable then sections 92.074 to 92.098, in their collective entirety, are invalid and shall have no legal effect as of the date of such judgment. In such event, both telecommunications companies and municipalities shall have the same rights as existed before the passage of 92.074 to 92.098, but shall not be entitled to reimbursement, or required to pay reimbursement, for any sums paid in the good faith 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 of sections 92.074 to 92.092. If any portion of sections 92.074 to 92.092 is declared unconstitutional or the application of any part of sections 92.074 to 92.092 to any person or circumstance is held invalid, section 71.680, RSMo, and its applicability to any person or circumstance shall remain valid and enforceable. If any portion of section 71.680, RSMo, is declared unconstitutional or the application of any part of section 71.680, RSMo, to any person or circumstance is held invalid, sections 92.074 to 92.092 and its applicability to any person or circumstance shall remain valid and enforceable.

T

Copy