

FIRST REGULAR SESSION

HOUSE BILL NO. 756

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

1759L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, and 92.092, RSMo, and to enact in lieu thereof four new sections relating to wireless telecommunications services taxes.

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

Section A. Sections 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, and 92.092, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 92.077, 92.080, 92.083, and 92.086, to read as follows:

92.077. **1. Sections 92.077 to 92.086 shall be known and may be cited as the "Municipal Telecommunications Business License Tax Modernization Act".**

2. As used in sections [92.074] **92.077** to [92.095] **92.086**, 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 and section 80.090, section 92.073, section 94.110, 94.270, or 94.360, 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; 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 (**47 U.S.C. Section 253(c)**), as amended, or under sections 67.1830 to 67.1846; or

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 (c) Any tax or fee levied for emergency services under section 190.292, 190.305,
17 190.325, 190.335, or 190.430, or any tax authorized by the general assembly after August 28,
18 2005, for emergency services;

19 (d) Any flat tax duly imposed on or before August 28, [2005] **2015**;

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

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

22 [(4)] (3) "Municipality", any city, county, town, or village in Missouri entitled by
23 authority of section 66.300, section 80.090, section 92.073, section 94.110, 94.270, or 94.360,
24 or under authority granted in its charter to assess a business license tax on telecommunications
25 companies;

26 (4) **"Prepaid wireless telecommunications service", a wireless telecommunications**
27 **service that is paid for in advance and is sold in predetermined units or dollars of which**
28 **the number declines with use in a known amount or expiration of time**;

29 (5) "Telecommunications company", any company doing business in this state that
30 provides or resells wireless telecommunications service;

31 (6) **"Wireless telecommunications service", [the same meaning] commercial mobile**
32 **radio service**, as such term is defined in [section 144.010] **47 C.F.R. 20.3, as amended,**
33 **including prepaid wireless telecommunications service**. The term telephone company, as used
34 in sections 94.110, 94.270, and 94.360, shall [have the same meaning as] **include a**
35 telecommunications company as defined in this section.

92.080. Notwithstanding any provisions of this chapter or chapter 66, 80, or 94, or the
2 provisions of any municipal charter, after August 28, [2005] **2015**, no municipality [may] **shall**
3 impose any business license tax[, tower tax, or antennae tax] on a telecommunications company
4 except as specified in sections [92.074] **92.077** to [92.095] **92.086**.

92.083. 1. On or after [July 1, 2006] **August 28, 2015**, if any city, county, village, or
2 town has imposed a business license tax on a telecommunications company, as authorized in this
3 chapter, or chapter 66, 80, or 94, or under the authority granted in its charter, the terms used in
4 such ordinance shall be construed, for the purposes of sections [92.074] **92.077** to [92.095]
5 **92.086**, to have the meanings set forth in this section, regardless of any contrary definition in the
6 ordinance:

7 (1) "Gross receipts" [means] , all receipts from the retail sale **by the**
8 **telecommunications company** of **wireless** telecommunications service taxable under section
9 144.020 **to a purchaser of such service**, and **receipts** from any retail customer **purchasing such**
10 **service** now or hereafter exempt from the state sales tax;

11 (2) ["Telephone service", "telecommunications service", "telecommunications", "local
12 exchange service", "local exchange telephone transmission service", "exchange telephone

13 service" or similar terms means telecommunications service as defined in section 92.077]
14 **"Retail sale", the sale of wireless telecommunications service by a telecommunications**
15 **company for any purpose other than resale.**

16 2. Nothing in this section shall have the effect of repealing any existing ordinance
17 imposing a business license tax on a telecommunications company; provided that a city with an
18 ordinance in effect prior to August 28, [2005] **2015**, complies with the provisions of [section
19 92.086] **sections 92.077 to 92.086.**

20 3. Any business license tax imposed on a telecommunications company after [July 1,
21 2006] **August 28, 2015**, shall be imposed **only** on the retail sale of **wireless** telecommunications
22 service **to a purchaser of such service.**

23 **4. Nothing in sections 92.077 to 92.086 shall be construed to modify or affect any**
24 **court-approved settlement agreement between a telecommunications company and a**
25 **municipality entered into before August 28, 2015, regarding the applicability of a business**
26 **license tax to such a company.**

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

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

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

20 (2) On or before February 1, 2006, each municipality shall provide the director and state
21 auditor with the total amount of tax revenue collected for the previous fiscal year of taxable gross
22 receipts from telecommunications companies. Any inconsistency or dispute arising from the

23 information provided by the municipalities and telecommunications companies shall be resolved
24 through an audit performed by the state auditor.

25 3. Beginning on July 1, 2006, the director shall henceforth collect, administer, and
26 distribute telecommunications business license tax revenues in accordance with the provisions
27 of sections 92.074 to 92.095.

28 4. Notwithstanding the provisions of any municipal business license tax ordinance,
29 effective July 1, 2006, all business license taxes shall be based solely and exclusively on those
30 gross receipts of telecommunications companies for the retail sale of telecommunications
31 services which are subject to taxation under sections 144.010 and 144.020. Any provisions in
32 any municipal taxing ordinances which provide different definitions, rules, or provisions are
33 expressly preempted and are null and void.

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

45 6. It is the intent of the general assembly that sections 92.074 to 92.095 comply with
46 Article X, Section 22 of the Missouri Constitution, so that the application of sections 92.074 to
47 92.095 shall have a revenue-neutral effect. Because business license taxes shall now be based
48 on the gross receipts subject to the sales tax, it is anticipated that the base of the existing business
49 license taxes in most cases shall be broadened, so in order to comply with Article X, Section 22
50 of the Missouri Constitution, the municipality shall adjust the gross receipts percentage rate
51 identified by the director in accordance with subsection 2 of this section so that the amount
52 collectible, in total from all telecommunications companies, excluding the collection fee
53 authorized in subsection 5 as defined herein, before and immediately after enactment remains
54 the same in each municipality. If the determination is made by a municipality that in order to
55 comply with Article X, Section 22 of the Missouri Constitution the gross receipts percentage rate
56 must be increased, such increase shall be passed by a majority vote of the qualified voters voting
57 in that municipality. The existing tax base shall be an amount equal to the total amount of
58 telecommunications business license taxes collected by a municipality for fiscal year 2005,

59 increased by fifty percent of the difference between such amount and the business license tax
60 receipts that would have been yielded by applying the gross receipts percentage rate identified
61 in accordance with subsection 1 of this section to the total gross receipts for all wireless
62 telecommunications services provided by telecommunications companies as identified in 47
63 U.S.C. Section 332(D)(1) and 47 C.F.R. Parts 22 or 24 in such fiscal year attributable to the
64 municipality. Based upon the rate information received from the director under this section, each
65 municipality shall, no later than April 1, 2006, promulgate and publish the revenue-neutral rates
66 to be applied in each municipality. Such tax rates shall be the applicable business license tax rate
67 for bills rendered on or after July 1, 2006. Any percentages in any ordinance that are contrary
68 to that established by the municipality herein are null and void. If any municipal business license
69 tax ordinance as of January 1, 2005, had a provision stating that the tax only applied to business
70 customers, the new calculated rate under this section also shall be determined based only on
71 business customers and shall apply only to business customers.

72 7. On or before April 1, 2007, the director, in consultation with the state auditor and
73 municipalities, shall examine revenues collected and forecast whether a shortfall or excess in
74 municipal revenues for each municipality is likely to occur for the fiscal year ending June 30,
75 2007, due to data reporting errors or other errors in the calculation of the revenue-neutral tax rate.
76 Section 32.057 shall not restrict the disclosure of information to perform such consultation. If
77 a shortfall or excess is expected, the director, after review and comment from municipalities and
78 telecommunications companies, shall promulgate and publish an adjustment in the rate in such
79 municipalities. Such tax rate adjustment, if necessary, shall apply to bills issued after July 1,
80 2007.

81 8. The director shall be notified in writing within thirty days of any change in the
82 municipal business license tax rate adopted by a municipality. The director shall promulgate
83 such rate changes, but such rate changes may only take effect on the first day of a calendar
84 quarter and only after a minimum of ninety days notice from the director to a
85 telecommunications company. Any subsequent increase in the business license tax rate passed
86 through an ordinance by a municipality which is above that rate as established by the
87 municipality under subsection 6 of this section shall be passed by a majority vote of the qualified
88 voters voting in that municipality. No municipal tax rate shall exceed the cap provided in
89 subsection 9 of this section.

90 9. Notwithstanding the provisions of subsections 3 to 8 of this section or any other
91 provision of law to the contrary, for any municipality not subject to the provisions of subsection
92 10 of this section, the maximum rate of taxation on gross receipts shall not exceed five percent
93 for bills rendered on or after July 1, 2006, except if the business license tax rate for any
94 municipality, as calculated in subsection 6 of this section, or if necessary, subsection 7 of this

95 section, is determined to be greater than five percent, then, notwithstanding the provisions of
96 such subsections, the business license tax rates for such municipality on and after July 1, 2006,
97 shall be as follows:

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

101 (2) For bills rendered between July 1, 2008, and June 30, 2010, the rate shall be half the
102 sum of the rate determined in subdivision (1) of this subsection and five percent; and

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

104 10. (1) Any municipality which prior to November 4, 1980, had an ordinance imposing
105 a business license tax on telecommunications companies which specifically included the words
106 "wireless", "cell phones", or "mobile phones" in its business license tax ordinance as revenues
107 upon which a business license tax could be imposed, and had not limited its tax to local
108 exchange telephone service or landlines, and had taken affirmative action to collect such tax
109 from wireless telecommunications providers prior to January 15, 2005, shall not be required to
110 adjust its business license tax rate as provided in subsection 6 of this section and shall not be
111 subject to the provisions of subsection 9 of this section.

112 (2) Any municipality which has an ordinance or an amendment to an ordinance imposing
113 a business license tax on telecommunications companies which was authorized or amended by
114 a public vote subsequent to November 4, 1980, and such authorization specifically included the
115 terms "wireless", "cell phones", or "mobile telephones" as revenues upon which a business
116 license tax could be imposed, and had not limited its tax to local exchange telephone service or
117 landlines, and had taken affirmative action to collect such tax from wireless telecommunications
118 providers prior to January 15, 2005, shall not be required to adjust its business license tax rate
119 as provided in subsection 6 of this section and shall not be subject to the provisions of subsection
120 9 of this section.

121 11. For purposes of sections 92.074 to 92.095, the director and any municipality shall
122 have the authority to audit any telecommunications company. Notwithstanding the provisions
123 of section 32.057, the director of revenue shall furnish any municipality with information it
124 requests to permit the municipality to review and audit the payments of any telecommunications
125 company.

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

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

130 [14.] 2. The provisions of [subsection 5 of section 144.190 and] subdivision (3) of
 131 subsection 12 of section 32.087 shall apply to the tax imposed under sections [92.074] **92.077**
 132 to [92.095].

133 15. Unless specifically stated otherwise in sections 92.074 to 92.095, taxpayer remedies,
 134 enforcement mechanisms, tax refunds, tax protests, assessments, and all other procedures shall
 135 be the same as those provided in chapter 144.

136 16. Any rule or portion of a rule, as that term is defined in section 536.010, that is
 137 created under the authority delegated in this section shall become effective only if it complies
 138 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
 139 This section and chapter 536 are nonseverable and if any of the powers vested with the general
 140 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
 141 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
 142 any rule proposed or adopted after August 28, 2005, shall be invalid and void] **92.086, provided**
 143 **that, with respect to prepaid wireless telecommunications service, the business license tax**
 144 **shall apply only to retail sales that are deemed to occur in the municipality as follows:**

145 (1) **The retail sale is effected in person by the purchaser at a business location of**
 146 **the telecommunications company if that business location is in the municipality; or**

147 (2) **The prepaid wireless telecommunications service is physically delivered to a**
 148 **purchaser at an address in the municipality provided to the telecommunications company;**
 149 **or**

150 (3) **The telecommunications company's records that are maintained in the regular**
 151 **course of business indicate that the purchaser's address is in the municipality and the**
 152 **records are not kept or made in bad faith; or**

153 (4) **The purchaser gives an address in the municipality during the consummation**
 154 **of the retail sale, including the purchaser's payment instrument if no other address is**
 155 **available, and the address is not given in bad faith; or**

156 (5) **The purchaser's mobile telephone number is associated with a location in the**
 157 **municipality, if no other location or address information is available.**

2 [92.074. Sections 92.074 to 92.095 shall be known as the "Municipal
 3 Telecommunications Business License Tax Simplification Act".]

2 [92.089. 1. The general assembly finds and declares it to be the policy
 3 of the state of Missouri that costly litigation which have or may be filed by
 4 Missouri municipalities against telecommunications companies, concerning the
 5 application of certain business license taxes to certain telecommunications
 6 companies, and to certain revenues of those telecommunications companies, as
 7 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

8 neither been determined to be valid nor liquidated. The general assembly further
9 finds and declares that the resolution of such uncertain litigation, the uniformity,
10 and the administrative convenience and cost savings to municipalities resulting
11 from, and the revenues which will or may accrue to municipalities in the future
12 as a result of the enactment of sections 92.074 to 92.095 are full and adequate
13 consideration to municipalities, as the term "consideration" is used in Article III,
14 Section 39(5) of the Missouri Constitution, for the immunity and dismissal of
15 lawsuits outlined in subsection 2 of this section.

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

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

23 (2) That certain categories of its revenues did not qualify under the
24 definition or wording of the ordinance as gross receipts or revenues upon which
25 business license taxes should be calculated; such a telecommunications company
26 is entitled to full immunity from, and shall not be liable to a municipality for, the
27 payment of the disputed amounts of business license taxes, up to and including
28 July 1, 2006. However, such immunity and release from liability shall not apply
29 to any business license tax imposed in accordance with subdivisions (1) and (2)
30 of subsection 10 of section 92.086 or sections 92.074 to 92.095 after July 1,
31 2006. If any municipality, prior to July 1, 2006, has brought litigation or caused
32 an audit of back taxes for the nonpayment by a telecommunications company of
33 municipal business license taxes, it shall immediately dismiss such lawsuit
34 without prejudice and shall cease and desist from continuing any audit, except
35 those cities described in subsection 10 of section 92.086.]
36

2 [92.092. All provisions of sections 92.074 to 92.089 are so essentially
3 and inseparably connected with, and so dependent upon, each other that no such
4 provision would be enacted without all others. If a court of competent
5 jurisdiction enters a final judgment on the merits that is not subject to appeal and
6 that declares any provision or part of sections 92.074 to 92.089 unconstitutional
7 or unenforceable then sections 92.074 to 92.089, in their collective entirety, are
8 invalid and shall have no legal effect as of the date of such judgment. In such
9 event, both telecommunications companies and municipalities shall have the
10 same rights as existed before August 28, 2005, but shall not be entitled to
11 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 92.089.]

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