

SECOND REGULAR SESSION

HOUSE BILL NO. 1814

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

5148H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 92, RSMo, by adding thereto four new sections relating to prepaid wireless telecommunications services taxes.

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

Section A. Chapter 92, RSMo, is amended by adding thereto four new sections, to be
2 known as sections 92.096, 92.098, 92.100, and 92.102, to read as follows:

92.096. 1. Sections 92.096 and 92.102 shall be known and may be cited as the
2 **"Prepaid Wireless Telecommunications Business License Tax Act".**

3 **2. As used in sections 92.096 to 92.102, unless the context clearly requires otherwise,**
4 **the following terms mean:**

5 **(1) "Business license tax", any tax, including any fee, charge, or assessment in the**
6 **nature of a tax, assessed by a municipality on a telecommunications company for the**
7 **privilege of doing business within the borders of such municipality, and specifically**
8 **includes any tax assessed on a telecommunications company by a municipality under**
9 **sections 66.300 and 80.090; under section 92.045, 92.073, 94.110, 94.270, or 94.360; or**
10 **under authority granted in its charter, as well as an occupation license tax, gross receipts**
11 **tax, franchise tax, or similar tax, but shall not include:**

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

13 **(b) Any municipal right-of-way usage fee imposed under the authority of a**
14 **municipality's police powers under section 253(c) of the federal Telecommunications Act**
15 **of 1996 (47 U.S.C. Section 253(c)), as amended, or under sections 67.1830 to 67.1846;**

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 on or after
18 August 28, 2016, for emergency services; or

19 (d) Any flat tax duly imposed;

20 (2) "Gross receipts", all receipts from the retail sale of prepaid wireless
21 telecommunications service;

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

23 (4) "Municipality", any city, county, town, or village in Missouri entitled by
24 authority of section 66.300, 80.090, 92.045, 92.073, 94.110, 94.270, or 94.360, or under
25 authority granted in its charter to assess a business license tax on telecommunications
26 companies;

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

30 (6) "Retail sale", the sale of wireless telecommunications service by a
31 telecommunications company for use or consumption and not for resale;

32 (7) "Telecommunications company", any company doing business in this state that
33 provides wireless telecommunications service, whether a facilities-based carrier or reseller.
34 The term "telecommunications company" shall include a third-party retailer of a
35 provider's wireless telecommunications service. To the extent a company that would
36 otherwise qualify as a telecommunications company makes a sale of prepaid wireless
37 telecommunications services that is for resale, the company is not considered a
38 telecommunications company for purposes of sections 92.096 to 92.102 and is not
39 responsible for the business license tax on those sales for resale;

40 (8) "Telecommunications service", the same meaning as such term is defined in
41 subdivision (14) of subsection 1 of section 144.010;

42 (9) "Wireless telecommunications service", telecommunications service that is
43 commercial mobile radio service, as such term is defined in 47 CFR 20.3, as amended.

2 92.098. Notwithstanding any provisions of this chapter or chapter 66, 80, or 94, or
3 the provisions of any municipal charter, after August 28, 2016, no municipality shall
4 impose any business license tax on the gross receipts of a telecommunications company
5 derived from the business of providing prepaid wireless telecommunications service, except
6 as specified in sections 92.096 to 92.102. Sections 92.096 to 92.102 shall not apply to
7 business license taxes on gross receipts other than gross receipts derived from prepaid
wireless telecommunications service.

2 **92.100. 1. Nothing in this section shall have the effect of repealing any existing**
3 **ordinance imposing a business license tax on a telecommunications company, provided**
4 **that, a city with an ordinance in effect prior to August 28, 2016, complies with the**
5 **provisions of sections 92.096 to 92.102.**

6 **2. Any business license tax imposed on the gross receipts of a telecommunications**
7 **company derived from the business of providing prepaid wireless telecommunications**
8 **service after August 28, 2016, shall be imposed only on the gross receipts from retail sales.**

9 **92.102. 1. The provisions of subdivision (3) of subsection 12 of section 32.087 shall**
10 **not apply to any business license tax imposed on the gross receipts of a telecommunications**
11 **company derived from the business of providing prepaid wireless telecommunications**
12 **service. With respect to prepaid wireless telecommunications service not subject to such**
13 **provisions, the gross receipts shall be deemed derived from engaging in business in a**
14 **municipality and subject to the municipality's business license tax in accordance with the**
15 **following hierarchy:**

16 **(1) By the municipality within whose limits the end user's residence or, for**
17 **nonresidential end users, the principal place of operations lies; or**

18 **(2) If the end user's residence or principal place of operations is unknown to the**
19 **telecommunications company, by the municipality within whose limits the end user's**
20 **billing address lies; or**

21 **(3) If the end user's billing address is unknown to the telecommunications**
22 **company, by the municipality within whose limits the store in which the sale takes place**
23 **lies; or**

24 **(4) If the place of sale is unknown to the telecommunications company, or if the end**
25 **user's address cannot be verified, then the total of all such sales with respect to each area**
26 **code shall be attributed to municipalities in proportion to the telecommunications**
27 **company's total sales of prepaid wireless telecommunications service within the area code.**

28 **2. If the telecommunications company's reliance on the information provided by**
29 **the end user is in good faith, a municipality shall not hold the telecommunications company**
30 **liable for any additional taxes, charges, or fees based on a different determination.**

31 **3. Any telecommunications company may recover from its customers through a line**
32 **item charge, or otherwise, all or part of the business license tax.**

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