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# FLORIDA

## **Sec. 202.19. Authorization to impose local communications services tax**

### **FLORIDA STATUTES, TITLE XIV TAXATION AND FINANCE, CHAPTER 202 COMMUNICATIONS SERVICES TAX SIMPLIFICATION LAW.**

Sec. 202.19.

**Authorization to impose local communications services tax. 202.19** (1) The governing authority of each county and municipality may, by ordinance, levy a discretionary communications services tax.

(2)(a) Charter counties and municipalities may levy the tax authorized by subsection (1) at a rate of up to 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees, and at a rate of up to 4.98 percent for municipalities and charter counties that have chosen to levy permit fees.

(b) Noncharter counties may levy the tax authorized by subsection (1) at a rate of up to 1.6 percent.

(c) The maximum rates authorized by paragraphs (a) and (b) do not include the add-ons of up to 0.12 percent for municipalities and charter counties or of up to 0.24 percent for noncharter counties authorized pursuant to s. 337.401, nor do they supersede conversion or emergency rates authorized by s. 202.20 which are in excess of these maximum rates.

(3)(a) The tax authorized under this section includes and is in lieu of any fee or other consideration, including, but not limited to, application fees, transfer fees, renewal fees, or claims for related costs, to which the municipality or county is otherwise entitled for granting permission to dealers of communications services, including, but not limited to, providers of cable television services, as authorized in 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way for the placement, construction, and maintenance of poles, wires, and other fixtures used in the provision of communications services.

(b) This subsection does not supersede or impair the right, if any, of a municipality or county to require the payment of consideration or to require the payment of regulatory fees or assessments by persons using or occupying its roads or rights-of-way in a capacity other than that of a dealer of communications services.

(4)(a)1. Except as otherwise provided in this section, the tax imposed by any municipality shall be on all communications services subject to tax under s. 202.12 which:

a. Originate or terminate in this state; and

b. Are charged to a service address in the municipality.

2. With respect to private communications services, the tax shall be on the sales price of such services provided within the municipality, which shall be determined in accordance with the following provisions:

a. Any charge with respect to a channel termination point located within such municipality;

b. Any charge for the use of a channel between two channel termination points located in such municipality; and

c. Where channel termination points are located both within and outside of the municipality:

(I) If any segment between two such channel termination points is separately billed, 50 percent of such charge; and

(II) If any segment of the circuit is not separately billed, an amount equal to the total charge for such circuit multiplied by a fraction, the numerator of which is the number of channel termination points within such municipality and the denominator of which is the total number of channel termination points of the circuit.

(b)1. Except as otherwise provided in this section, the tax imposed by any county under subsection (1) shall be on all communications services subject to tax under s. 202.12 which:

a. Originate or terminate in this state; and

b. Are charged to a service address in the unincorporated area of the county.

2. With respect to private communications services, the tax shall be on the sales price of such services provided within the unincorporated area of the county, which shall be determined in accordance with the following provisions:

a. Any charge with respect to a channel termination point located within the unincorporated area of such county;

b. Any charge for the use of a channel between two channel termination points located in the unincorporated area of such county; and

c. Where channel termination points are located both within and outside of the unincorporated area of such county:

(I) If any segment between two such channel termination points is separately billed, 50 percent of such charge; and

(II) If any segment of the circuit is not separately billed, an amount equal to the total charge for such circuit multiplied by a fraction, the numerator of which is the number of channel termination points within the unincorporated area of such county and the denominator of which is the total number of channel termination points of the circuit.

(5) In addition to the communications services taxes authorized by subsection (1), a discretionary sales surtax that a county or school board has levied under s. 212.055 is imposed as a local communications services tax under this section, and the rate shall be determined in accordance with s. 202.20(3).

(a) Except as otherwise provided in this subsection, each such tax rate shall be applied, in addition to the other tax rates applied under this chapter, to communications services subject to tax under s. 202.12 which:

1. Originate or terminate in this state; and
2. Are charged to a service address in the county.

(b) With respect to private communications services, the tax shall be on the sales price of such services provided within the county, which shall be determined in accordance with the following provisions:

1. Any charge with respect to a channel termination point located within such county;
2. Any charge for the use of a channel between two channel termination points located in such county; and
3. Where channel termination points are located both within and outside of such county:
  - a. If any segment between two such channel termination points is separately billed, 50 percent of such charge; and
  - b. If any segment of the circuit is not separately billed, an amount equal to the total charge for such circuit multiplied by a fraction, the numerator of which is the number of channel termination points within such county and the denominator of which is the total number of channel termination points of the circuit.

(6) Notwithstanding any other provision of this section, a tax imposed under this section does not apply to any direct-to-home satellite service.

(7) Notwithstanding any law to the contrary, a tax imposed under this section shall not exceed \$25,000 per calendar year on communications services charges billed to a service address located in a municipality or county imposing a local communications services tax

for interstate communications services that originate outside this state and terminate within this state. This subsection applies only to holders of a direct-pay permit issued under s. 202.12(3). A person who does not qualify for a direct-pay permit under s. 202.12(3) does not qualify for a direct-pay permit under this subsection. A refund may not be given for taxes paid before receiving a direct-pay permit. Upon application, the department shall identify the service addresses qualifying for the limitation provided by this subsection on the direct-pay permit issued under s. 202.12(3) and authorize such purchaser to pay the local communications tax on such interstate services directly to the department if the application indicates that the majority of such services used by such person and billed to a service address are for communications originating outside of this state and terminating in this state. The direct-pay permit shall also indicate the counties or municipalities to which it applies. Any dealer of communications services furnishing communications services to the holder of a valid direct-pay permit is relieved of the obligation to collect and remit the tax on such services. Tax payments and returns pursuant to a direct-pay permit shall be monthly. As used in this subsection, "person" means a single legal entity and does not mean a group or combination of affiliated entities or entities controlled by one person or group of persons.

(8) The revenues raised by any tax imposed under subsection (1) or s. 202.20(1), or distributed to a local government pursuant to s. 202.18, may be used by a municipality or county for any public purpose, including, but not limited to, pledging such revenues for the repayment of current or future bonded indebtedness. Revenues raised by a tax imposed under subsection (5) shall be used for the same purposes as the underlying discretionary sales surtax imposed by the county or school board under s. 212.055.

(9) Notwithstanding any provision of law to the contrary, the exemption set forth in s. 202.125(1) shall not apply to a tax imposed by a municipality, school board, or county pursuant to subsection (4) or subsection (5).

(10) To the extent that a provider of communications services is required to pay to a local taxing jurisdiction a tax, charge, or other fee under any franchise agreement or ordinance with respect to the services or revenues that are also subject to the tax imposed by this section, such provider is entitled to a credit against the amount payable to the state pursuant to this section in the amount of such tax, charge, or fee with respect to such services or revenues. The amount of such credit shall be deducted from the amount that such local taxing jurisdiction is entitled to receive under s. 202.18(3).

(11) Notwithstanding any other provision of this section, with respect to mobile communications services, the rate of a local communications services tax levied under this section shall be applied to the sales price of all mobile communications services deemed to be provided to a customer by a home service provider pursuant to s. 117(a) of the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, if such customer's service address is located within the municipality levying the tax or within the unincorporated area of the county levying the tax, as the case may be.

(As added by Ch. 2000-260 (S.B. 1338), Laws 2000; as amended by [Ch. 2001-140](#))

(S.B. 1878), Laws 2001, effective October 1, 2001; Ch. 2005-132 (S.B. 1322), Laws 2005, effective June 2, 2005; Ch. 2005-187 (S.B. 2070), Laws 2005, effective July 1, 2005, and applicable retroactively to October 1, 2002.)

# UTAH

Ch. 250 (H.B. 238), Laws 2007, effective April 30, 2007.

**10-1-405** Collection of taxes by commission —Uniform interlocal agreement — Rulemaking authority —Charge for services.

**10-1-405(1)** Subject to the other provisions of this section, the commission shall collect, enforce, and administer any municipal telecommunications license tax imposed under this part pursuant to:

**10-1-405(1)(a)** the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:

**10-1-405(1)(a)(i)** Title 59, Chapter 1, General Taxation Policies; and

**10-1-405(1)(a)(ii)** Title 59, Chapter 12, Part 1, Tax Collection:

**10-1-405(1)(a)(ii)(A)** except for:

**10-1-405(1)(a)(ii)(A)(I)** Subsection 59-12-103 (2)(e) (ed. note: bundled transactions involving food or tpp);

**10-1-405(1)(a)(ii)(A)(II)** Section 59-12-104 (ed. note: exemptions);

**10-1-405(1)(a)(ii)(A)(III)** Section 59-12-104.1;

**10-1-405(1)(a)(ii)(A)(IV)** Section 59-12-104.2; and

**10-1-405(1)(a)(ii)(A)(V)** Section 59-12-107.1 (ed. note: direct pay permits); and

**10-1-405(1)(a)(ii)(B)** except that for purposes of Section 59-12-110, the term “taxpayer” may include a customer from whom a municipal telecommunications license tax is recovered in accordance with Subsection 10-1-403 (2); and

**10-1-405(1)(b)** a uniform interlocal agreement:

**10-1-405(1)(b)(i)** between:

**10-1-405(1)(b)(i)(A)** the municipality that imposes the municipal

telecommunications license tax; and

**10-1-405(1)(b)(i)(B)** the commission;

**10-1-405(1)(b)(ii)** that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

**10-1-405(1)(b)(iii)** that complies with Subsection (2)(a); and

**10-1-405(1)(b)(iv)** that is developed by rule in accordance with Subsection (2)(b).

**10-1-405(2)(a)** The uniform interlocal agreement described in Subsection (1) shall provide that the commission shall:

**10-1-405(2)(a)(i)** transmit monies collected under this part:

**10-1-405(2)(a)(i)(A)** monthly; and

**10-1-405(2)(a)(i)(B)** by electronic funds transfer by the commission to the municipality;

**10-1-405(2)(a)(ii)** conduct audits of the municipal telecommunications license tax;

**10-1-405(2)(a)(iii)** charge the municipality for the commission's services under this section in an amount:

**10-1-405(2)(a)(iii)(A)** sufficient to reimburse the commission for the cost to the commission in rendering the services; and

**10-1-405(2)(a)(iii)(B)** that may not exceed an amount equal to 1.5% of the municipal telecommunications license tax imposed by the ordinance of the municipality; and

**10-1-405(2)(a)(iv)** collect, enforce, and administer the municipal telecommunications license tax authorized under this part pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

**10-1-405(2)(b)** In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall develop a uniform interlocal agreement that meets the requirements of this section.

**10-1-405(3)** The administrative fee charged under Subsection (2)(a) shall be:

**10-1-405(3)(a)** deposited in the Sales and Use Tax Administrative Fees Account; and

**10-1-405(3)(b)** used for administration of municipal telecommunications license taxes under this part.

**10-1-405(4)** If, on July 1, 2007, a municipality has in effect an ordinance that levies a municipal telecommunications license tax under this part at a rate that exceeds 3.5%:

**10-1-405(4)(a)** except as provided in Subsection (4)(b), beginning on July 1, 2007, the commission shall collect the municipal telecommunications license tax:

**10-1-405(4)(a)(i)** within the municipality;

**10-1-405(4)(a)(ii)** at a rate of 3.5%; and

**10-1-405(4)(a)(iii)** from a telecommunications provider required to pay the municipal telecommunications license tax on or after July 1, 2007; and

**10-1-405(4)(b)** the commission shall collect a municipal telecommunications license tax within the municipality at the rate imposed by the municipality if:

**10-1-405(4)(b)(i)** after July 1, 2007, the municipality has in effect an ordinance that levies a municipal telecommunications license tax under this part at a rate of up to 3.5%;

**10-1-405(4)(b)(ii)** the municipality meets the requirements of Subsection 10-1-403 (3)(b) in changing the rate of the municipal telecommunications license tax; and

**10-1-405(4)(b)(iii)** a telecommunications provider is required to pay the municipal telecommunications license tax on or after the day on which the ordinance described in Subsection (4)(b)(ii) takes effect.

(As added by Ch. 253 (S.B. 23), Laws 2003; as amended by Ch. 255 (H.B. 273), Laws 2004; Ch. 158 (S.B. 127), Laws 2005; Ch. 253 (S.B. 233), Laws 2006, effective July 1, 2006; (H.B. 27), Laws 2007, effective February 23, 2007, operative retroactively to January 1, 2007; Ch. 250 (H.B. 238), Laws 2007, effective April 30, 2007.)

# VIRGINIA

See text in **GREEN** and in particular **15.2108.1, p. 5 and Chapter 6.2, p. 19.**

STATE-LAW, 2006 VA H 568 , Enacted - Final, (April 6, 2006)  
2006 VA H 568 , Enacted - Final

Changes in Bill text reflected as:

~~Text Deleted~~

**Text Added**

~~Text Vetoed~~

SUMMARY: Applies a statewide communications sales and use tax to retail communication and video services on a competitively neutral basis; relates to Voice-over-Internet Protocol service; provides for franchise fees and public use rights-of-way fees on cable operators; cable franchises, telecommunications relay services and mobile telecommunications.-SAME\_\_AS:

## CHAPTER 780

An Act to amend and reenact Sections 8.01-225, 56-458, 56-462, 56-468.1, 56-484.12, 56-484.17, 56-484.18, 58.1- 3, 58.1-3815, and 58.1-3816.2 of the Code of Virginia, to amend the Code of Virginia by adding in Article 1 of Chapter 21 of Title 15.2 a section numbered 15.2-2108.1:1, by adding in Chapter 13 of Title 51.5 a section numbered 51.5-115, by adding in Title 58.1 a chapter numbered 6.2, consisting of sections numbered 58.1-645 through 58.1-662, and by adding in Chapter 17 of Title 58.1 an article numbered 7, consisting of a section numbered 58.1-1730, and to repeal Sections 15.2-2108, 56-484.4, 56-484.5, 56-484.6, 58.1-3812, 58.1-3813.1, and 58.1-3818.1 through 58.1-3818.7 of the Code of Virginia, and to repeal the third enactment clause of Chapter 858 of the 1972 Acts of Assembly, relating to the taxation of communications services; penalties.

[H 568]

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1. That Sections 8.01-225, 56-458, 56-462, 56-468.1, 56-484.12, 56-484.17, 56-484.18, 58.1- 3, 58.1-3815, and 58.1-3816.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 21 of Title 15.2 a section numbered 15.2-2108.1:1, by adding in Chapter 13 of Title 51.5 a section numbered 51.5-115, by adding in Title 58.1 a chapter numbered 6.2, consisting of sections numbered 58.1-645 through 58.1-662, and by adding in Chapter 17 of Title 58.1

an article numbered 7, consisting of a section numbered 58.1-1730, as follows:

Section 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.

\* \* \*

**Section 15.2-2108.1:1. Franchise fees and public rights-of-way fees on cable operators.**

**A. As used in this section:**

**"Cable operator" means any person or group of persons that (i) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (ii) otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system, whether or not the operator has entered into a franchise agreement with a locality. Cable operator does not include a provider of wireless or direct-to-home satellite transmission service.**

**"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. Section 522(20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. Section 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. Section 303(v).**

**"Cable system" or "cable television system" means any facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. Section 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) any portion of a system that serves fewer than 50 subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Section 573.**

**"Franchise" means an initial authorization, or renewal thereof, issued by a franchising authority, including a locality or the Commonwealth Transportation Board, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way, including either a negotiated cable franchise or an ordinance cable franchise.**

**B. Notwithstanding any other provision of law, if a cable operator uses the public rights-of-way the cable operator shall be subject to the Public Rights-of-Way Use Fee as provided in Section 56-468.1. Any limitation as to fees charged for the use of the public rights-of-way shall not be applicable to pole attachments and conduit occupancy agreements between a cable operator and a locality or its authority or commission, which permits such operator to use the public poles or conduits.**

**C. Notwithstanding any other provision of law, no new or renewed cable franchise entered into on or after January 1, 2007, shall include a franchise fee as long as cable services are subject to the Virginia Communications Sales and Use Tax (Section 58.1-645 et seq.). Franchise fee as used in this subsection shall have the same meaning as that term is defined in 47 U.S.C. Section 542(g).**

**1. All cable franchises in effect as of January 1, 2007, shall remain in full force and effect, and nothing in this section shall impair any obligation of any such agreement; provided, however, that any requirement in such an existing franchise for payment of a monetary franchise fee based on the gross revenues of the franchisee shall be fulfilled in the manner specified in subdivision 2.**

**2. Each cable operator owing monetary payments for franchise fees, until the expiration of one or more such existing franchises, shall include with its monthly remittance of the Communications Sales and Use Tax a report, by locality, of the amounts due for franchise fees accruing during that month. The Department of Taxation shall, on behalf of the cable operator in the relevant locality, then distribute to each county, city, or town the amount reported by each locality's franchisee(s). Such payments shall reduce the cable operator's franchise fee liability. The monthly distributions shall be paid from the Communications Sales and Use Tax Trust Fund before making the other calculations and distributions required by Section 58.1-662. Until distributed to the individual localities, such amounts shall be deemed to be held in trust for their respective accounts.**

**3. A locality's acceptance of any payment under subdivision 2 shall not prejudice any rights of the locality under the applicable cable franchises (i) to audit or demand adjustment of the amounts reported by its franchisee, or (ii) to enforce the provisions of the franchise by any lawful administrative or judicial means.**

**Section 51.5-115. Telecommunications relay service; standards; funding.**

**A. As used in this section, unless the context requires otherwise, the term:**

**"Operation" means those functions reasonably and directly necessary for the provision of telecommunications relay service, including contract procurement and administration and public education and information regarding telecommunications relay service.**

**"Telecommunications relay service" means a facility whereby a person who has a hearing or speech disability using a text telephone and a person using a conventional telephone device can communicate with each other via telephone.**

**"VITA" means the Virginia Information Technologies Agency.**

**"Voice carry over" means technology that will enable a deaf or hard-of-hearing person with good speech to use his voice, instead of the text telephone, to communicate back to the hearing person.**

**B. The Department, with the assistance of VITA, shall be responsible for the provision and operation of telecommunications relay service for all text telephones within the Commonwealth. Telecommunications relay service shall include at a minimum:**

**1. Twenty-four-hour-a-day, seven-day-a-week statewide access with no limitations or restrictions that are not applicable to voice users of the telephone network;**

**2. An answer rate that ensures that at least 85% of the incoming calls are operator-answered within 20 seconds and at least 99% of incoming calls are answered within 60 seconds;**

**3. Technological advances, including the capability of voice carryover; and**

**4. Adequate facilities and personnel to ensure that calls are interpreted accurately; notwithstanding this provision, unless miscommunication on a call is caused by the willful misconduct of the telecommunications relay service provider, liability of the telecommunications relay service provider shall be limited to the charges imposed on users for the call.**

**C. All costs associated with the establishment and operation of the telecommunications relay service, including but not limited to personnel costs incurred by the Department for administering the service, shall be funded through a distribution made to the Department in accordance with the provisions of Section 58.1-662 and any money transferred from the Department as provided for in subsection D. Such distributions, when appropriate, may be zero. The distributions**

shall be based on projected costs and special interim distributions may be made if actual costs exceed projections. No distribution shall be made and no funds shall be expended to support any activities that are not reasonably and directly necessary for the operation of the telecommunications relay service as defined in this section.

**D. The Department shall transfer any funds received from the National Exchange Carrier Association, or other funding sources for purposes of operating telecommunications relay services, to VITA for costs associated with telecommunications relay service.**

Section 56-458. Right to erect lines parallel to railroads; occupation of roads, streets, etc.; location of same.

\* \* \*

Section 56-462. Franchise to occupy parks, streets, etc.; imposition of terms, conditions, etc., as to use of streets, etc., and construction thereon.

\* \* \*

Section 56-468.1. Public Rights-of-Way Use Fee.

A. As used in this article:

"Access lines" are defined to include residence and business telephone lines and other switched ~~common~~ **(packet or circuit)** lines connecting the customer premises to the ~~end-office switch~~ **public switched telephone network for the transmission of outgoing voice-grade telecommunications services. Centrex, PBX, or other multistation telecommunications services will incur a Public Rights-of-Way Use Fee on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched network. ISDN Primary Rate Interface services will be charged five Public Rights-of-Way Use Fees for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications service provider shall be charged one fee for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network.** Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines **internally provided and** used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service ~~lines~~ .

**"Cable operator" and "cable system" have the same meanings as contained in subsection A of Section 15.2-2108.1:1.**

**"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.**

~~"Certificated provider of telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service.~~

**"ISDN Primary Rate Interface" means digital communications service containing 24 bearer channels, each of which is a full 64,000 bits-per-second.**

"Locality" has the same meaning as contained in Section 15.2-102.

**"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.**

"New installation of telecommunications facilities" or "new installation" includes the construction of new pole lines and new conduit systems, and the burying of new cables in existing public rights-of-way. New installation does not include adding new cables to existing pole lines and conduit systems.

**"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.**

**"PBX trunk" means a connection of the customer's PBX switch to the central office.**

**"Provider of local telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange telephone service and any other person who provides local telephone services to the public for a fee, other than a CMRS provider as that term is defined in Section 56-484.12.**

**"Provider of telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service to the public for a fee and any other person who provides local or long distance telephone services to the public for a fee, other than a CMRS provider as that term is defined in Section 56-484.12.**

"Public highway" means, for purposes of computing the Public Rights-of-Way Use Fee, the centerline mileage of highways and streets which are part of the State Highway System as defined in Section 33.1-25, the secondary system of highways as defined in Section 33.1-67, the highways of those cities and certain towns defined in Section 33.1-

41.1 and the highways and streets maintained and operated by counties which have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of Section 11 of Chapter 415 of the Acts of Assembly of 1932 and which have not elected to return.

**"Subscriber" means a person who receives video programming, as defined in 47 U.S.C. Section 522(20), distributed by a cable operator, as defined in subsection A of Section 15.2-2108.1:1, and does not further distribute it.**

B. **1.** Notwithstanding any other provisions of law, there is hereby established a Public Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning, subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a ~~certificated~~ provider of telecommunications service by the Commonwealth Transportation Board or a locality in connection with a permit for such occupation and use granted in accordance with Section 56-458 or Section 56-462. Cities and towns whose public streets and roads are not maintained by the Virginia Department of Transportation, and any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of Section 11 of Chapter 415 of the Acts of Assembly of 1932, may impose the Public Rights-of-Way Use Fee **on the ultimate end-users of local telecommunications service** only by local ordinance. Localities, their authorities or commissions, and the Commonwealth Transportation Board may allow ~~certificated~~ providers of telecommunications services **and cable operators** to use their electric poles or electric conduits in exchange for payment of a fee.

**2. The Public Rights-of-Way Use Fee established by this section is hereby imposed on all cable operators that use the public rights-of-way.**

C. The amount of the Public Rights-of-Way Use Fee shall be calculated annually by the Department of Transportation (VDOT), based on the calculations described in subsection D of this section. In no year shall the amount of the fee be less than ~~fifty cents~~ **\$0.50** per access line per month.

D. The annual rate of the Public Rights-of-Way Use Fee shall be calculated by multiplying the number of public highway miles in the Commonwealth by a highway mileage rate (as defined in subsection E of this section), and by adding the number of feet of new installations in the Commonwealth (multiplied by ~~one dollar~~ **\$1** per foot), and dividing this sum by the total number of access lines in the Commonwealth. The monthly rate shall be this annual rate divided by ~~twelve~~ **12** .

E. The annual multiplier per mile is ~~\$250 from July 1, 1998, through June 30, 1999; \$300 per mile for the year July 1, 1999, through June 30, 2000; \$350 per mile for the year July 1, 2000, through June 30, 2001; and~~ \$425 per mile beginning July 1, 2001 and thereafter.

F. The data used for the calculation in subsection D shall be based on the following

information and schedule: (i) all ~~certificated~~ providers of telecommunications services shall remit to VDOT by December 1 of each year data indicating the number of feet of new installations made during the one-year period ending September 30 of that year, which shall be auditable by affected localities, and the number of access lines as of September 30 of that year, which shall be auditable by affected localities; and (ii) the public highway mileage from the most recently published VDOT report. By the following January 15, VDOT shall calculate the Public Rights-of-Way Use Fee to be used in the fiscal year beginning the next ensuing July 1 and report it to all affected localities and ~~certificated~~ providers of local ~~exchange telephone~~ **telecommunications** services.

G. A ~~certificated~~ provider of local ~~exchange telephone~~ **telecommunications** service shall collect the Public Rights-of-Way Use Fee on a per access line basis **and the cable operator shall collect the Public Rights-of-Way Use Fee on a per subscriber basis** by adding the fee to each ultimate end user's monthly bill for local ~~exchange telephone~~ **telecommunications** service **or cable service** . **A company providing both local telecommunications service and cable service to the same ultimate end user may collect only one Public Rights-of-Way Use Fee from that ultimate end user based on (i) the local telecommunications service if the locality in which the ultimate end user resides has imposed a Public Rights-of-Way Use Fee on local telecommunications service or (ii) cable service if the locality in which the subscriber resides has not imposed a Public Rights-of-Way Use Fee on local telecommunications service.** The Public Rights-of-Way Use Fee shall, when billed, be stated as a distinct item separate and apart from the monthly charge for local ~~exchange telephone~~ **telecommunications** service **and cable service** . Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local ~~exchange service~~ **telecommunications service** provider **or cable operator** , the Public Rights-of-Way Use Fee shall constitute a debt of the consumer to the locality , ~~or~~ VDOT , **or the Department of Taxation, as may be applicable** . If any ultimate end user **or subscriber** refuses to pay the Public Rights-of-Way Use Fee, the local ~~exchange~~ **telecommunications** service provider **or cable operator** shall notify the locality , ~~or~~ VDOT, **or the Department of Taxation**, as appropriate. ~~After the consumer pays the Public Rights-of-Way Use Fee to the local exchange service provider, such fee collected shall be deemed to be held in trust by the local exchange service provider until remitted to the locality or VDOT.~~ **All fees collected in accordance with the provisions of this section shall be deemed to be held in trust by the local telecommunications service provider and the cable operator until remitted to the locality, VDOT, or the Department of Taxation, as applicable.**

H. Within two months after the end of each calendar quarter, each ~~certificated~~ provider of local ~~exchange telephone~~ **telecommunications** service shall remit the amount of Public Rights-of-Way Use Fees it has billed to ultimate end users during such preceding quarter, as follows:

1. The ~~certificated~~ provider of local ~~exchange telephone~~ **telecommunications** service shall remit directly to the applicable locality all Public Rights-of-Way Use Fees

billed in (i) cities ~~;~~ ; (ii) towns whose public streets and roads are not maintained by VDOT ~~;~~ ; and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of Section 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return, provided, however, that such counties shall use a minimum of ~~ten percent~~ **10%** of the Public Rights-of-Way Use Fees they receive for transportation construction or maintenance purposes. Any city currently subject to Section 15.2-3530 shall use a minimum of ~~ninety percent~~ **90%** of the Public Rights-of-Way Use Fees it receives for transportation construction or maintenance purposes.

2. The Public Rights-of-Way Use Fees billed in all other counties shall be remitted by each ~~certificated~~ provider of local ~~exchange telephone~~ **telecommunications** service to VDOT. VDOT shall allocate the total amount received from ~~certificated~~ providers to the construction improvement program of the secondary system of state highways. Within such allocation to the secondary system, VDOT shall apportion the amounts so received among the several counties, other than those described in clause (iii) of subdivision 1, on the basis of population, with each county being credited a share of the total equal to the proportion that its population bears to the total population of all such counties. For purposes of this section the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent. Such allocation and apportionment of Public Rights-of-Way Use Fees shall be in addition to, and not in lieu of, any other allocation of funds to such secondary system and apportionment to counties thereof provided by law.

**I. The Public Rights-of-Way Use Fee billed by a cable operator shall be remitted to the Department of Taxation for deposit into the Communication Sales and Use Tax Trust Fund by the twentieth day of the month following the billing of the fee.**

**J.** Any locality with a franchise agreement, ordinance implementing a franchise agreement or other form of consent allowing the use of the public rights-of-way **by a provider of local telecommunications service** , existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a franchise fee or charge **on a provider of local telecommunications service** in effect as of February 1, 1997, may elect to continue enforcing such existing franchise, ordinance or code section or other form of consent in lieu of receiving the Public Rights-of-Way Use Fee; provided, however, that such city or town does not (i) discriminate among telecommunications service providers and (ii) adopt any additional rights-of-way management practices that do not comply with Sections 56-458 C and 56-462 C. The Public Rights-of-Way Use Fee shall not be imposed in any such locality.

Any locality electing to adopt the Public Rights-of-Way Use Fee by ordinance shall notify all affected ~~certificated~~ providers of local ~~exchange telephone~~ **telecommunications** service no later than March 15 preceding the fiscal year. Such notice shall be in writing and sent by certified mail from such locality to the registered

agent of the affected ~~certificated~~ provider **or providers** of local ~~exchange telephone-~~  
**telecommunications** service. ~~For localities adopting the Public Rights of Way Use Fee  
by ordinance in 1998, collection of the fee shall begin on the first day of the month  
occurring ninety days after receipt of notice as required by this subsection.~~

Section 56-484.12. Definitions.

As used in this article, unless the context requires a different meaning:

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless Enhanced 9- 1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9- 1-1 call.

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to Section 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"Division" means the Division of Public Safety Communications created in Section 2.2-2031.

"Enhanced 9- 1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9- 1-1." Such service automatically directs 9- 1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to

furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (Section 56-265.1 et seq.) of Title 56.

"Place of primary use" has the meaning ~~attributed in subsection M of Section 58.1-3812~~ **as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124, as amended** .

"Public safety answering point" or "PSAP" means a facility (i) equipped and staffed on a 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 PSAP costs" means all reasonable direct recurring and nonrecurring capital costs and operating expenses incurred by a PSAP in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service and direct personnel costs incurred in receiving and dispatching wireless E-911 emergency telephone calls, which have been sworn to by an authorized agent of the PSAP.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of \$.75 billed by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary use in Virginia; provided, however, that any fee collected or paid pursuant to the third paragraph of subsection B of Section 56-484.17 is not required to be billed.

Section 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Wireless E-911 Fund (the Fund). The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the

Fund. Except as provided in Section 2.2-2031, moneys in the Fund shall be used solely for the purposes stated in subsections C through F. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Information Officer of the Commonwealth.

B. Each CMRS provider shall collect a wireless E-911 surcharge from each of its customers whose place of primary use is within the Commonwealth. In addition, the wireless E-911 surcharge shall be imposed on wireless customers who purchase prepaid CMRS service, subject to the provisions in this subsection. However, no surcharge shall be imposed on federal, state and local government agencies. A payment equal to all wireless E-911 surcharges shall be remitted within 30 days to the Board for deposit in the Fund. Each CMRS provider and CMRS reseller may retain an amount equal to three percent of the amount collected to defray the costs of collecting the surcharges. State and local taxes shall not apply to any wireless E-911 surcharge collected from customers. Surcharges collected from customers who do not purchase CMRS service on a prepaid basis shall be subject to the provisions of ~~subsection K of Section 58.1-3812~~ **the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116 et seq., as amended)** .

\* \* \*

(Provisions for tax collection on CMRS purchases)

## **CHAPTER 6.2.**

### **VIRGINIA COMMUNICATIONS SALES AND USE TAX.**

#### **Section 58.1-645. Short title.**

**This chapter shall be known and may be cited as the "Virginia Communications Sales and Use Tax Act."**

#### **Section 58.1-646. Administration of chapter.**

**The Tax Commissioner shall administer and enforce the collection of the taxes and penalties imposed by this chapter.**

#### **Section 58.1-647. Definitions.**

**Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title, unless defined otherwise, as follows:**

**"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. Section 522(20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as**

defined in 47 U.S.C. Section 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. Section 303(v).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance.

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of

a package of services offered to users. "Internet access service" does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

"Place of primary use" means the street address representative of where the customer's use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider.

"Postpaid calling service" means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service.

"Prepaid calling service" means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decrease in number with use.

"Private communications service" means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

"Sales price" means the total amount charged in money or other consideration by a communications services provider for the sale of the right or privilege of using communications services in the Commonwealth, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

"Service address" means, (i) the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If the location is not known

in clause (i), "service address" means (ii) the origination point of the signal of the telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If the location is not known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of primary use.

**Section 58.1-648. Imposition of sales tax; exemptions.**

**A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of 5% of the sales price of each communications service that is sourced to the Commonwealth in accordance with Section 58.1-649.**

**B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. Section 22.99; (vi) a communications services provider's internal use of communications services in connection with its business of providing communications services; (vii) charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; (viii) sales for resale; and (ix) charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government.**

**C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (Section 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue**

to be exempt from the tax imposed in accordance with the provisions of this chapter.

**Section 58.1-649. Sourcing rules for communication services.**

**A. Except for the defined communication services in subsection C, the sale of communications service sold on a call-by-call basis shall be sourced to the Commonwealth when the call (i) originates and terminates in the Commonwealth or (ii) either originates or terminates in the Commonwealth and the service address is also located in the Commonwealth.**

**B. Except for the defined communication services in subsection C, a sale of communication services sold on a basis other than a call-by-call basis, shall be sourced to the customer's place of primary use.**

**C. The sale of the following communication services shall be sourced to the Commonwealth as follows:**

**1. Subject to the definitions and exclusions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 116, a sale of mobile communication services shall be sourced to the customer's place of primary use.**

**2. A sale of postpaid calling service shall be sourced to the origination point of the communications signal as first identified by either (i) the seller's communications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.**

**3. A sale of a private communications service shall be sourced as follows:**

**a. Service for a separate charge related to a customer channel termination point shall be sourced to each jurisdiction in which such customer channel termination point is located;**

**b. Service where all customer termination points are located entirely within one jurisdiction shall be sourced to such jurisdiction in which the customer channel termination points are located;**

**c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged shall be sourced 50% to each jurisdiction in which the customer channel termination points are located; and**

**d. Service for segments of a channel located in more than one jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on a percentage determined by dividing the number of customer channel termination points in each jurisdiction by the total number of customer channel termination points.**

**Section 58.1-650. Bundled transaction of communications services.**

**A. For purposes of this chapter, a bundled transaction of communications services includes communications services taxed under this chapter and consists of distinct and identifiable properties, services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different.**

**B. In the case of a bundled transaction described in subsection A, if the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services shall be subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.**

**Section 58.1-651. Tax collectible by communication service providers; jurisdiction.**

**A. The tax levied by Section 58.1-648 shall be collectible by all persons who are communications services providers, who have sufficient contact with the Commonwealth to qualify under subsection B, and who are required to be registered under Section 58.1-653. However, the communications services provider shall separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.**

**B. A communications services provider shall be deemed to have sufficient activity within the Commonwealth to require registration if he does any of the activities listed in Section 58.1-612.**

**C. Nothing contained in this chapter shall limit any authority that the Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of communications sales and use taxes by any communications services provider.**

**Section 58.1-652. Customer remedy procedures for billing errors.**

**If a customer believes that an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications service provider reasonably requires to process the request. Within 15 days of receiving a notice under this section in the**

provider's billing dispute office, the communications service provider shall review its records, within an additional 15 days, to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications service provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

**Section 58.1-653. Communications services providers' certificates of registration; penalty.**

**A. Every person desiring to engage in or conduct business as a communications services provider in the Commonwealth shall file with the Tax Commissioner an application for a certificate of registration.**

**B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the Tax Commissioner may reasonably require.**

**C. When the required application has been made, the Tax Commissioner shall issue to each applicant a certificate of registration. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of the business designated therein.**

**D. Whenever a person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon a hearing after giving the noncompliant person 30 days' notice in writing, specifying the time and place of the hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend the certificate of registration held by that person. The notice may be personally served or served by registered mail directed to the last known address of the noncompliant person.**

**E. Any person who engages in business as a communications services provider in the Commonwealth without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, shall be guilty of a Class 2 misdemeanor as shall each officer of a corporation that so engages in business as an unregistered communications services provider. Each day's continuance in business**

in violation of this section shall constitute a separate offense.

F. If the holder of a certificate of registration ceases to conduct his business, the certificate shall expire upon cessation of business, and the certificate holder shall inform the Tax Commissioner in writing within 30 days after he has ceased to conduct business. If the holder of a certificate of registration desires to change his place of business, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only for the collection of the use tax.

**Section 58.1-654. Returns by communications services providers; payment to accompany return.**

A. Every communications services provider required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax is billed, transmit to the Tax Commissioner a return showing the sales price, or cost price, as the case may be, and the tax collected or accrued arising from all transactions taxable under this chapter. In the case of communications services providers regularly keeping books and accounts on the basis of an annual period that varies from 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

A sales or use tax return shall be filed by each registered communications services provider even though the communications services provider is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. At the time of transmitting the return required under subsection A, the communications services provider shall remit to the Tax Commissioner the amount of tax due after making appropriate adjustments for accounts uncollectible and charged off as provided in Section 58.1-655. The tax imposed by this chapter shall, for each period, become delinquent on the twenty-first day of the succeeding month if not paid.

**Section 58.1-655. Bad debts.**

In any return filed under the provisions of this chapter, the communications services provider may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts that are owed to the communications services provider and that have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected payment determined by treating prior payments on each debt as consisting of the same proportion of payment, sales tax, and other nontaxable charges as in the total debt originally owed to the communications

services provider. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the communications services provider shall be included in the first return filed after such collection.

**Section 58.1-656. Discount.**

For the purpose of compensating a communications services provider holding a certificate of registration under Section 58.1-653 for accounting for and remitting the tax levied by this chapter, a communications services provider shall be allowed the following percentages of the first 3% of the tax levied by Section 58.1-648 and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

Monthly Taxable Sales Percentage \$0 to \$62,500 4% \$62,501 to \$208,000 3% \$208,001 and above 2%

The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a communications services provider.

**Section 58.1-657. Sales presumed subject to tax; exemption certificates; Internet access service providers.**

A. All sales are subject to the tax until the contrary is established. The burden of proving that a sale of communications services is not taxable is upon the communications services provider unless he takes from the taxpayer a certificate to the effect that the service is exempt under this chapter.

B. The exemption certificate mentioned in this section shall relieve the person who obtains such a certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that the certificate is no longer acceptable. The exemption certificate shall be signed, manually or electronically, by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the communications services sold or to be sold under a blanket exemption certificate; and shall be substantially in the form as the Tax Commissioner may prescribe.

C. In the case of a provider of Internet access service that purchases a telecommunications service to provide Internet access, the Internet access provider shall give the communications service provider a certificate of use containing its name, address and signature, manually or electronically, of an officer of the Internet access service provider. The certificate of use shall state that the purchase of telecommunications service is being made in its capacity as a provider of Internet access in order to provide such access. Upon receipt of the certificate of use, the communications service provider shall be relieved of any liability for the

communications sales and use tax related to the sale of telecommunications service to the Internet access service provider named in the certificate. In the event the provider of Internet access uses the telecommunications service for any taxable purpose, that provider shall be liable for and pay the communications sales and use tax directly to the Commonwealth in accordance with Section 58.1-658.

D. If a taxpayer who holds a certificate under this section and makes any use of the service other than an exempt use or retention, demonstration, or display while holding the communications service for resale in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale.

**Section 58.1-658. Direct payment permits.**

A. Notwithstanding any other provision of this chapter, the Tax Commissioner shall authorize a person who uses taxable communications services within the Commonwealth to pay any tax levied by this chapter directly to the Commonwealth and waive the collection of the tax by the communications services provider. No such authority shall be granted or exercised except upon application to the Tax Commissioner and issuance by the Tax Commissioner of a direct payment permit. If a direct payment permit is issued, then payment of the communications sales and use tax on taxable communications services shall be made directly to the Tax Commissioner by the permit holder.

B. On or before the twentieth day of each month every permit holder shall file with the Tax Commissioner a return for the preceding month, in a form prescribed by the Tax Commissioner, showing the total value of the taxable communications services so used, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the submitted return, and other information as the Tax Commissioner deems reasonably necessary. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on the tax shall be chargeable on every extended payment at the rate determined in accordance with Section 58.1-15.

C. A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the Tax Commissioner.

D. A person holding a direct payment permit that has not been cancelled shall not be required to pay the tax to the communications services provider as otherwise required by this chapter. Such persons shall notify each communications services provider from whom purchases of taxable communications services are made of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of notice, a communications services provider shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of taxable communications

services to the direct payment permit holder. Communications services providers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner that the amount involved and identity of each purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the direct payment permit, and that person shall promptly notify in writing communications services providers from whom purchases of taxable communications services are made of such cancellation or surrender. Upon receipt of notice, the communications services provider shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales of taxable communications services thereafter made to the former direct payment permit holder.

#### Section 58.1-659. Collection of tax; penalty.

A. The tax levied by this chapter shall be collected and remitted by the communications services provider, but the communications services provider shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. Notwithstanding any exemption from taxes that any communications services provider now or hereafter may enjoy under the Constitution or laws of the Commonwealth, or any other state, or of the United States, a communications services provider shall collect the tax from the customer of taxable communications services and shall remit the same to the Tax Commissioner as provided by this chapter.

C. Any communications services provider collecting the communications sales or use tax on transactions exempt or not taxable under this chapter shall remit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has been refunded to the customer or credited to his account.

D. Any communications services provider who intentionally neglects, fails, or refuses to collect the tax upon every taxable sale of communications services made by him, or his agents or employees on his behalf, shall be liable for and pay the tax himself. Moreover, any communications services provider who intentionally neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

All sums collected by a communications services provider as required by this chapter shall be deemed to be held in trust for the Commonwealth.

**Section 58.1-660. Sale of business.**

**If any communications services provider liable for any tax, penalty, or interest levied by this chapter sells his business or stock of goods or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the Tax Commissioner showing that all taxes, penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as required above, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid that were incurred by the business operation of the former owner. In no event, however, shall the tax, penalties, and interest due by the purchaser be more than the purchase price paid for the business or stock of goods.**

**Section 58.1-661. Certain provisions in Chapter 6 of this title to apply, mutatis mutandis.**

**The provisions in Sections 58.1-630 through 58.1-637 of this title shall apply to this chapter, mutatis mutandis, except as herein provided and except that whenever the term "dealer" is used in these sections, the term "communications services provider" shall be substituted. The Tax Commissioner shall promulgate regulations to interpret and clarify the applicability of Sections 58.1-630 through 58.1-637 to this chapter.**

**Section 58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and Use Tax Trust Fund; localities' share.**

**A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be known as the Communications Sales and Use Tax Trust Fund (the Fund). The Fund shall be established on the books of the Comptroller and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. After transferring moneys from the Fund to the Department of Taxation to pay for the direct costs of administering this chapter, the moneys in the Fund shall be allocated to the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection C, after the payment (i) for the telephone relay service center is made to the Department of Deaf and Hard-of-Hearing in accordance with the provisions of Section 51.5-115 and (ii) of any franchise fee amount due to localities in accordance with any cable franchise in effect as of January 1, 2007.**

**B. The localities' share of the net revenue distributable under this section among the counties, cities, and towns shall be apportioned by the Tax Commissioner**

and distributed as soon as practicable after the close of each month during which the net revenue was received into the Fund. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received in the state treasury during each month.

C. The net revenue distributable among the counties, cities, and towns shall be apportioned and distributed monthly during the remainder of Fiscal Year 2007 and during each subsequent fiscal year according to the percentage of telecommunications and television cable funds (local consumer utility tax on landlines and wireless, E-911, business license tax in excess of 0.5%, cable franchise fee, video programming excise tax, local consumer utility tax on cable television) they received respectively in Fiscal Year 2006 from local tax rates adopted on or before January 1, 2006. An amount equal to the total franchise fee paid to each locality with a cable franchise existing on the effective date of this section at the rate in existence on January 1, 2007, shall be subtracted from the amount owed to such locality prior to the distribution of moneys from the Fund.

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the communications sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Communications Sales and Use Tax Trust Fund.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

## Article 7.

### E-911 Tax.

#### Section 58.1-1730. Tax for enhanced 911 service; definitions.

A. As used in this section, unless the context requires a different meaning:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications

provider shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9- 1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9- 1-1 call.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in Section 58.1-647.

"Enhanced 9- 1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits "9- 1-1." Such service automatically directs 9- 1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

"ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

**"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.**

**B. There is hereby imposed a monthly tax of \$0.75 on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of CMRS, as that term is defined in Section 56-484.12. The revenues shall be collected and remitted monthly by the communications services provider to the Department and deposited into the Communications Sales and Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of subsection C.**

**C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications services provider reasonably requires to process the request. Within 15 days of receiving a notice under this section, the communications services provider shall review its records within an additional 15 days to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications services provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications services provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications services provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.**

**For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the same meanings provided in Section 58.1-647.**

**D. For the purpose of compensating a communications services provider for accounting for and remitting the tax levied by this section, each communications services provider shall be allowed 3% of the amount of tax revenues due and accounted for in the form of a deduction in submitting the return and remitting the amount due.**

Section 58.1-3815. Consumer taxes upon lessees of certain property.

Any county, city or town authorized to levy and collect consumer utility taxes as provided in ~~Sections 58.1-3812 and~~ **Section** 58.1-3814 may levy such taxes upon and collect them from the occupant or lessee of any premises, title to which is held by (i) a person whose property is tax exempt under Chapter 36 (Section 58.1-3600 et seq.) of this title, or (ii) by a person who is exempt from license taxation by virtue of Section 58.1-2508. Such taxes shall be applied to the utility services purchased by such person and furnished at such premises for the use and benefit of such occupant or lessee. Such taxes may be fixed at a specific amount per rental unit or other base or measured in some other manner as the county, city or town levying such taxes may prescribe. This section shall not be construed to empower any county, city or town to impose such taxes upon (i) the Commonwealth or any of its political subdivisions or agencies of either, or (ii) the federal government or any of its agencies, or (iii) any person who by law is exempt therefrom.

Section 58.1-3816.2. Exemptions from consumer utility taxes.

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