



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB5257

Introduced 01/25/06, by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

35 ILCS 630/2
35 ILCS 638/10

from Ch. 120, par. 2002

Amends the Telecommunications Excise Tax Act and the Mobile Telecommunications Sourcing Conformity Act. Provides that the terms "service address" and "primary place of use" include the 9-digit enhanced United States postal zip code. Effective immediately.

LRB094 18332 BDD 54173 b

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Telecommunications Excise Tax Act is amended
5 by changing Section 2 as follows:

6 (35 ILCS 630/2) (from Ch. 120, par. 2002)

7 Sec. 2. As used in this Article, unless the context clearly
8 requires otherwise:

9 (a) "Gross charge" means the amount paid for the act or
10 privilege of originating or receiving telecommunications in
11 this State and for all services and equipment provided in
12 connection therewith by a retailer, valued in money whether
13 paid in money or otherwise, including cash, credits, services
14 and property of every kind or nature, and shall be determined
15 without any deduction on account of the cost of such
16 telecommunications, the cost of materials used, labor or
17 service costs or any other expense whatsoever. In case credit
18 is extended, the amount thereof shall be included only as and
19 when paid. "Gross charges" for private line service shall
20 include charges imposed at each channel termination point
21 within this State, charges for the channel mileage between each
22 channel termination point within this State, and charges for
23 that portion of the interstate inter-office channel provided
24 within Illinois. Charges for that portion of the interstate
25 inter-office channel provided in Illinois shall be determined
26 by the retailer as follows: (i) for interstate inter-office
27 channels having 2 channel termination points, only one of which
28 is in Illinois, 50% of the total charge imposed; or (ii) for
29 interstate inter-office channels having more than 2 channel
30 termination points, one or more of which are in Illinois, an
31 amount equal to the total charge multiplied by a fraction, the
32 numerator of which is the number of channel termination points

1 within Illinois and the denominator of which is the total
2 number of channel termination points. Prior to January 1, 2004,
3 any method consistent with this paragraph or other method that
4 reasonably apportions the total charges for interstate
5 inter-office channels among the states in which channel
6 terminations points are located shall be accepted as a
7 reasonable method to determine the charges for that portion of
8 the interstate inter-office channel provided within Illinois
9 for that period. However, "gross charges" shall not include any
10 of the following:

11 (1) Any amounts added to a purchaser's bill because of
12 a charge made pursuant to (i) the tax imposed by this
13 Article; (ii) charges added to customers' bills pursuant to
14 the provisions of Sections 9-221 or 9-222 of the Public
15 Utilities Act, as amended, or any similar charges added to
16 customers' bills by retailers who are not subject to rate
17 regulation by the Illinois Commerce Commission for the
18 purpose of recovering any of the tax liabilities or other
19 amounts specified in such provisions of such Act; (iii) the
20 tax imposed by Section 4251 of the Internal Revenue Code;
21 (iv) 911 surcharges; or (v) the tax imposed by the
22 Simplified Municipal Telecommunications Tax Act.

23 (2) Charges for a sent collect telecommunication
24 received outside of the State.

25 (3) Charges for leased time on equipment or charges for
26 the storage of data or information for subsequent retrieval
27 or the processing of data or information intended to change
28 its form or content. Such equipment includes, but is not
29 limited to, the use of calculators, computers, data
30 processing equipment, tabulating equipment or accounting
31 equipment and also includes the usage of computers under a
32 time-sharing agreement.

33 (4) Charges for customer equipment, including such
34 equipment that is leased or rented by the customer from any
35 source, wherein such charges are disaggregated and
36 separately identified from other charges.

1 (5) Charges to business enterprises certified under
2 Section 9-222.1 of the Public Utilities Act, as amended, to
3 the extent of such exemption and during the period of time
4 specified by the Department of Commerce and Economic
5 Opportunity ~~Community Affairs~~.

6 (6) Charges for telecommunications and all services
7 and equipment provided in connection therewith between a
8 parent corporation and its wholly owned subsidiaries or
9 between wholly owned subsidiaries when the tax imposed
10 under this Article has already been paid to a retailer and
11 only to the extent that the charges between the parent
12 corporation and wholly owned subsidiaries or between
13 wholly owned subsidiaries represent expense allocation
14 between the corporations and not the generation of profit
15 for the corporation rendering such service.

16 (7) Bad debts. Bad debt means any portion of a debt
17 that is related to a sale at retail for which gross charges
18 are not otherwise deductible or excludable that has become
19 worthless or uncollectable, as determined under applicable
20 federal income tax standards. If the portion of the debt
21 deemed to be bad is subsequently paid, the retailer shall
22 report and pay the tax on that portion during the reporting
23 period in which the payment is made.

24 (8) Charges paid by inserting coins in coin-operated
25 telecommunication devices.

26 (9) Amounts paid by telecommunications retailers under
27 the Telecommunications Municipal Infrastructure
28 Maintenance Fee Act.

29 (10) Charges for nontaxable services or
30 telecommunications if (i) those charges are aggregated
31 with other charges for telecommunications that are
32 taxable, (ii) those charges are not separately stated on
33 the customer bill or invoice, and (iii) the retailer can
34 reasonably identify the nontaxable charges on the
35 retailer's books and records kept in the regular course of
36 business. If the nontaxable charges cannot reasonably be

1 identified, the gross charge from the sale of both taxable
2 and nontaxable services or telecommunications billed on a
3 combined basis shall be attributed to the taxable services
4 or telecommunications. The burden of proving nontaxable
5 charges shall be on the retailer of the telecommunications.

6 (b) "Amount paid" means the amount charged to the
7 taxpayer's service address in this State regardless of where
8 such amount is billed or paid.

9 (c) "Telecommunications", in addition to the meaning
10 ordinarily and popularly ascribed to it, includes, without
11 limitation, messages or information transmitted through use of
12 local, toll and wide area telephone service; private line
13 services; channel services; telegraph services;
14 teletypewriter; computer exchange services; cellular mobile
15 telecommunications service; specialized mobile radio;
16 stationary two way radio; paging service; or any other form of
17 mobile and portable one-way or two-way communications; or any
18 other transmission of messages or information by electronic or
19 similar means, between or among points by wire, cable,
20 fiber-optics, laser, microwave, radio, satellite or similar
21 facilities. As used in this Act, "private line" means a
22 dedicated non-traffic sensitive service for a single customer,
23 that entitles the customer to exclusive or priority use of a
24 communications channel or group of channels, from one or more
25 specified locations to one or more other specified locations.
26 The definition of "telecommunications" shall not include value
27 added services in which computer processing applications are
28 used to act on the form, content, code and protocol of the
29 information for purposes other than transmission.
30 "Telecommunications" shall not include purchases of
31 telecommunications by a telecommunications service provider
32 for use as a component part of the service provided by him to
33 the ultimate retail consumer who originates or terminates the
34 taxable end-to-end communications. Carrier access charges,
35 right of access charges, charges for use of inter-company
36 facilities, and all telecommunications resold in the

1 subsequent provision of, used as a component of, or integrated
2 into end-to-end telecommunications service shall be
3 non-taxable as sales for resale.

4 (d) "Interstate telecommunications" means all
5 telecommunications that either originate or terminate outside
6 this State.

7 (e) "Intrastate telecommunications" means all
8 telecommunications that originate and terminate within this
9 State.

10 (f) "Department" means the Department of Revenue of the
11 State of Illinois.

12 (g) "Director" means the Director of Revenue for the
13 Department of Revenue of the State of Illinois.

14 (h) "Taxpayer" means a person who individually or through
15 his agents, employees or permittees engages in the act or
16 privilege of originating or receiving telecommunications in
17 this State and who incurs a tax liability under this Article.

18 (i) "Person" means any natural individual, firm, trust,
19 estate, partnership, association, joint stock company, joint
20 venture, corporation, limited liability company, or a
21 receiver, trustee, guardian or other representative appointed
22 by order of any court, the Federal and State governments,
23 including State universities created by statute or any city,
24 town, county or other political subdivision of this State.

25 (j) "Purchase at retail" means the acquisition,
26 consumption or use of telecommunication through a sale at
27 retail.

28 (k) "Sale at retail" means the transmitting, supplying or
29 furnishing of telecommunications and all services and
30 equipment provided in connection therewith for a consideration
31 to persons other than the Federal and State governments, and
32 State universities created by statute and other than between a
33 parent corporation and its wholly owned subsidiaries or between
34 wholly owned subsidiaries for their use or consumption and not
35 for resale.

36 (l) "Retailer" means and includes every person engaged in

1 the business of making sales at retail as defined in this
2 Article. The Department may, in its discretion, upon
3 application, authorize the collection of the tax hereby imposed
4 by any retailer not maintaining a place of business within this
5 State, who, to the satisfaction of the Department, furnishes
6 adequate security to insure collection and payment of the tax.
7 Such retailer shall be issued, without charge, a permit to
8 collect such tax. When so authorized, it shall be the duty of
9 such retailer to collect the tax upon all of the gross charges
10 for telecommunications in this State in the same manner and
11 subject to the same requirements as a retailer maintaining a
12 place of business within this State. The permit may be revoked
13 by the Department at its discretion.

14 (m) "Retailer maintaining a place of business in this
15 State", or any like term, means and includes any retailer
16 having or maintaining within this State, directly or by a
17 subsidiary, an office, distribution facilities, transmission
18 facilities, sales office, warehouse or other place of business,
19 or any agent or other representative operating within this
20 State under the authority of the retailer or its subsidiary,
21 irrespective of whether such place of business or agent or
22 other representative is located here permanently or
23 temporarily, or whether such retailer or subsidiary is licensed
24 to do business in this State.

25 (n) "Service address" means the location, including the
26 9-digit enhanced United States postal zip code, of
27 telecommunications equipment from which the telecommunications
28 services are originated or at which telecommunications
29 services are received by a taxpayer. In the event this may not
30 be a defined location, as in the case of mobile phones, paging
31 systems, maritime systems, service address means the
32 customer's place of primary use as defined in the Mobile
33 Telecommunications Sourcing Conformity Act, including the
34 9-digit enhanced United States postal zip code. For
35 air-to-ground systems and the like, service address shall mean
36 the location, including the 9-digit enhanced United States

1 postal zip code, of a taxpayer's primary use of the
2 telecommunications equipment as defined by telephone number,
3 authorization code, or location in Illinois where bills are
4 sent.

5 (o) "Prepaid telephone calling arrangements" mean the
6 right to exclusively purchase telephone or telecommunications
7 services that must be paid for in advance and enable the
8 origination of one or more intrastate, interstate, or
9 international telephone calls or other telecommunications
10 using an access number, an authorization code, or both, whether
11 manually or electronically dialed, for which payment to a
12 retailer must be made in advance, provided that, unless
13 recharged, no further service is provided once that prepaid
14 amount of service has been consumed. Prepaid telephone calling
15 arrangements include the recharge of a prepaid calling
16 arrangement. For purposes of this subsection, "recharge" means
17 the purchase of additional prepaid telephone or
18 telecommunications services whether or not the purchaser
19 acquires a different access number or authorization code.
20 "Prepaid telephone calling arrangement" does not include an
21 arrangement whereby a customer purchases a payment card and
22 pursuant to which the service provider reflects the amount of
23 such purchase as a credit on an invoice issued to that customer
24 under an existing subscription plan.

25 (Source: P.A. 92-474, eff. 8-1-02; 92-526, eff. 1-1-03; 92-878,
26 eff. 1-1-04; 93-286, 1-1-04; revised 12-6-03.)

27 Section 10. The Mobile Telecommunications Sourcing
28 Conformity Act is amended by changing Section 10 as follows:

29 (35 ILCS 638/10)

30 Sec. 10. Definitions. As used in this Act:

31 "Charges for mobile telecommunications services" means any
32 charge for, or associated with, the provision of commercial
33 mobile radio service, as defined in Section 20.3 of Title 47 of
34 the Code of Federal Regulations as in effect on June 1, 1999,

1 or any charge for, or associated with, a service provided as an
2 adjunct to a commercial mobile radio service, that is billed to
3 the customer by or for the customer's home service provider
4 regardless of whether individual transmissions originate or
5 terminate within the licensed service area of the home service
6 provider.

7 "Customer" means (i) the person or entity that contracts
8 with the home service provider for mobile telecommunications
9 services or (ii) if the end user of mobile telecommunications
10 services is not the contracting party, the end user of the
11 mobile telecommunications services, but this clause (ii)
12 applies only for the purpose of determining the place of
13 primary use. "Customer" does not include (i) a reseller of
14 mobile telecommunications service or (ii) a serving carrier
15 under an arrangement to serve the customer outside the home
16 service provider's licensed service area.

17 "Designated database provider" means a corporation,
18 association, or other entity representing all the political
19 subdivisions of a State that is:

20 (i) responsible for providing an electronic database
21 prescribed in Section 25 if the State has not provided such
22 electronic database; and

23 (ii) approved by municipal and county associations or
24 leagues of the State whose responsibility it would
25 otherwise be to provide such database prescribed by
26 Sections 116 through 126 of Title 4 of the United States
27 Code.

28 "Enhanced zip code" means a United States postal zip code
29 of 9 or more digits.

30 "Home service provider" means the facilities-based carrier
31 or reseller with which the customer contracts for the provision
32 of mobile telecommunications services.

33 "Licensed service area" means the geographic area in which
34 the home service provider is authorized by law or contract to
35 provide commercial mobile radio service to the customer.

36 "Mobile telecommunications service" means commercial

1 mobile radio service, as defined in Section 20.3 of Title 47 of
2 the Code of Federal Regulations as in effect on June 1, 1999.

3 "Place of primary use" means the street address, including
4 the 9-digit enhanced United States postal zip code,
5 representative of where the customer's use of the mobile
6 telecommunications service primarily occurs, which must be:

7 (i) the residential street address or the primary
8 business street address of the customer; and

9 (ii) within the licensed service area of the home
10 service provider.

11 "Prepaid telephone calling services" means the right to
12 purchase exclusively telecommunications services that must be
13 paid for in advance that enables the origination of calls using
14 an access number, authorization code, or both, whether manually
15 or electronically dialed, if the remaining amount of units of
16 service that have been prepaid is known by the provider of the
17 prepaid service on a continuous basis.

18 "Reseller" means a provider who purchases
19 telecommunications services from another telecommunications
20 service provider and then resells, uses as a component part of,
21 or integrates the purchased services into a mobile
22 telecommunications service. "Reseller" does not include a
23 serving carrier with which a home service provider arranges for
24 the services to its customers outside the home service
25 provider's licensed service area.

26 "Serving carrier" means a facilities-based carrier
27 providing mobile telecommunications service to a customer
28 outside a home service provider's or reseller's licensed
29 service area.

30 "Taxing jurisdiction" means any of the several states, the
31 District of Columbia, or any territory or possession of the
32 United States, any municipality, city, county, township,
33 parish, transportation district, or assessment jurisdiction,
34 or any other political subdivision within the territorial
35 limits of the United States with the authority to impose a tax,
36 charge, or fee.

1 (Source: P.A. 92-474, eff. 8-1-02.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.