

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 209**  
93RD GENERAL ASSEMBLY

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Reported from the Committee on Economic Development, Tourism and Local Government, May 2, 2005, with recommendation that the Senate Committee Substitute do pass.

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TERRY L. SPIELER, Secretary.

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**AN ACT**

To amend chapters 71 and 92, RSMo, by adding thereto nine new sections relating to assessment and collection of various taxes on telecommunications companies.

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

Section A. Chapters 71 and 92, RSMo, are amended by adding thereto nine new sections, to be known as sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and 92.098, to read as follows:

**71.675. 1. Notwithstanding any other provision of law to the contrary, no city or town shall bring any action in federal or state court in this state as a representative member of a class to enforce or collect any business license tax imposed on a telecommunications company. A city or town may, individually or as a single plaintiff in a multiple-plaintiff lawsuit, bring an action in federal or state court in this state to enforce or collect any business license tax imposed on a telecommunications company.**

**2. Nothing in this section shall be construed to preclude any taxpayer from initiating an action in federal or state court as a representative member of a class seeking injunctive relief against the Missouri department of revenue to enforce the imposition, assessment, or collection of the business license tax provided under sections 92.074 to 92.098, RSMo.**

**92.074. Sections 92.074 to 92.098 shall be known as the "Municipal Telecommunications Business License Tax Simplification Act".**

**92.077. As used in sections 92.074 to 92.098, unless the context clearly requires otherwise, the following terms mean:**

**(1) "Business license tax", any tax, including any fee, charge, or assessment in the nature of a tax, assessed by a municipality on a**

5 telecommunications company for the privilege of doing business within the  
6 borders of such municipality, and specifically includes any tax assessed on a  
7 telecommunications company by a municipality under section 66.300, RSMo,  
8 and section 80.090, RSMo, section 92.073, section 94.110, 94.270, or 94.360,  
9 RSMo, or under authority granted in its charter, as well as an occupation  
10 license tax, gross receipts tax, franchise tax, or similar tax, but shall not  
11 include:

12 (a) Any state or municipal sales tax imposed under sections 144.010 to  
13 144.525, RSMo; or

14 (b) Any municipal right-of-way usage fee imposed under the authority  
15 of a municipality's police powers under Section 253(c) of the Federal  
16 Telecommunications Act of 1996, or under sections 67.1830 to 67.1846, RSMo;  
17 or

18 (c) Any tax or fee levied for emergency services under section 190.292,  
19 190.305, 190.325, 190.335, or 190.430, RSMo, or any tax authorized by the  
20 general assembly after August 28, 2005, for emergency services;

21 (d) Any flat tax dually imposed on or before August 28, 2005;

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

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

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

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

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

92.080. Notwithstanding any provisions of this chapter or chapter 66,  
2 80, or 94, RSMo, or the provisions of any municipal charter, after August 28,  
3 2005, no municipality may impose any business license tax, tower tax, or  
4 antennae tax on a telecommunications company except as specified in  
5 sections 92.074 to 92.098.

92.083. 1. On or after July 1, 2006, if any city, county, village, or town  
2 has imposed a business license tax on a telecommunications company, as  
3 authorized in this chapter, or chapter 66, 80, or 94, RSMo, or under the

4 authority granted in its charter, the terms used in such ordinance shall be  
5 construed, for the purposes of section 92.074 to 92.098, to have the meanings  
6 set forth in this section, regardless of any contrary definition in the  
7 ordinance:

8 (1) "Gross receipts" means all receipts from the retail sale of  
9 telecommunications service taxable under section 144.020, RSMo, and from  
10 any retail customer now or hereafter exempt from the state sales tax;

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

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

19 3. Any business license tax imposed on a telecommunications company  
20 after July 1, 2006, shall be imposed on the retail sale of telecommunications  
21 service.

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

5 (1) The name of the municipality imposing the tax;

6 (2) The name of the tax as denoted by the municipality;

7 (3) The citation to the municipal code provisions imposing the tax; and

8 (4) The percentage of gross receipts.

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

15 2. (1) On or before February 1, 2006, all telecommunications companies  
16 in Missouri shall provide the director and the state auditor with the amount  
17 of municipal business license tax which they paid each Missouri municipality  
18 identified by the director in accordance with subsection 1 of this section for  
19 the previous four quarters. On or before February 1, 2006, all

20 telecommunications companies in Missouri shall provide the director and the  
21 state auditor with an itemized list establishing their gross receipts for the  
22 previous four quarters for each category of gross receipts in each  
23 municipality identified by the director in accordance with subsection 1 of this  
24 section upon which a sales tax is paid;

25 (2) On or before February 1, 2006, each municipality shall provide the  
26 director and state auditor with the total amount of tax revenue collected for  
27 the previous fiscal year of taxable gross receipts from telecommunications  
28 companies. Any inconsistency or dispute arising from the information  
29 provided by the municipalities and telecommunications companies shall be  
30 resolved through an audit performed by the state auditor.

31 3. Beginning on July 1, 2006, the director shall henceforth collect,  
32 administer, and distribute telecommunications business license tax revenues  
33 in accordance with the provisions of sections 92.074 to 92.098.

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

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

55 6. It is the intent of the general assembly that sections 92.074 to 92.098  
56 comply with Article X, Section 22 of the Missouri Constitution, so that the

57 application of sections 92.074 to 92.098 shall have a revenue-neutral  
58 effect. Because business license taxes shall now be based on the gross  
59 receipts subject to the sales tax, it is anticipated that the base of the existing  
60 business license taxes in most cases shall be broadened, so in order to comply  
61 with Article X, Section 22 of the Missouri Constitution, the municipality shall  
62 adjust the gross receipts percentage rate identified by the director in  
63 accordance with subsection 2 of this section so that the amount collectable,  
64 in total from all telecommunications companies, excluding the collection fee  
65 authorized in subsection 5 as defined herein, before and immediately after  
66 enactment remains the same in each municipality. If the determination is  
67 made by a municipality that in order to comply with article X, section 22 of  
68 the Missouri Constitution the gross receipts percentage rate must be  
69 increased, such increase shall be passed by a majority vote of the qualified  
70 voters in that municipality. The existing tax base shall be an amount equal  
71 to the total amount of telecommunication business license taxes collected by  
72 a municipality for fiscal year 2005, increased by fifty percent of the difference  
73 between the estimated business license tax liability on the total taxable gross  
74 receipts for all services provided by telecommunications companies in such  
75 fiscal year attributable to the municipality, and the total tax revenue  
76 attributable to the telecommunications business license tax collected by such  
77 municipality in such fiscal year. Based upon the rate information received  
78 from the director under this section, each municipality shall, no later than  
79 April 1, 2006, promulgate and publish the revenue neutral rates to be applied  
80 in each municipality. Such tax rates shall be the applicable business license  
81 tax rate for bills rendered on or after July 1, 2006. Any percentages in any  
82 ordinance that are contrary to that established by the municipality herein are  
83 null and void.

84       7. On or before April 1, 2007, the director, in consultation with the state  
85 auditor and municipalities, shall examine revenues collected and forecast  
86 whether a shortfall or excess in municipal revenues for each municipality is  
87 likely to occur for the fiscal year ending June 30, 2007, due to data reporting  
88 errors or other errors in the calculation of the revenue neutral tax  
89 rate. Section 32.057, RSMo, shall not restrict the disclosure of information to  
90 perform such consultation. If a shortfall or excess is expected, the director,  
91 after review and comment from municipalities and telecommunications  
92 companies, shall recommend a one time adjustment in the rate in such  
93 municipalities. Such tax rate adjustment, if necessary, shall apply to bills

94 issued after July 1, 2007.

95           8. The director shall be notified in writing within thirty days of any  
96 change in the municipal business license tax rate adopted by a  
97 municipality. The director shall promulgate such rate changes, but such rate  
98 changes may only take effect on the first day of a calendar quarter and only  
99 after a minimum of ninety days notice from the director to a  
100 telecommunications company. Any subsequent increase in the business  
101 license tax rate passed through an ordinance by a municipality which is  
102 above that rate as established by the municipality under subsection 6 of this  
103 section shall be passed by a majority vote of the qualified voters in that  
104 municipality. No municipal tax rate shall exceed the cap provided in  
105 subsection 9 of this section.

106           9. Notwithstanding the provisions of subsections 3 to 8 of this section  
107 or any other provision of law to the contrary, for any municipality not subject  
108 to the provisions of subsection 10 of this section, the maximum rate of  
109 taxation on gross receipts shall not exceed five percent for bills rendered on  
110 or after July 1, 2006.

111           10. (1) Any municipality which prior to November 4, 1980, had an  
112 ordinance imposing a business license tax on telecommunications companies  
113 which specifically included the words "wireless", "cell phones", or "mobile  
114 phones" in its business license tax ordinance as revenues upon which a  
115 business license tax could be imposed, and had not limited its tax to local  
116 exchange telephone service or landlines, and had taken affirmative action to  
117 collect such tax from wireless telecommunications providers prior to January  
118 15, 2005, shall not be required to adjust its business license tax rate as  
119 provided in subsection 6 of this section and shall not be subject to the  
120 provisions of subsection 9 of this section.

121           (2) Any municipality which has an ordinance or an amendment to an  
122 ordinance imposing a business license tax on telecommunications companies  
123 which was authorized or amended by a public vote subsequent to November  
124 4, 1980, and such authorization specifically included the terms "wireless", "cell  
125 phones", or "mobile telephones" as revenues upon which a business license tax  
126 could be imposed, and had not limited its tax to local exchange telephone  
127 service or landlines, and had taken affirmative action to collect such tax from  
128 wireless telecommunications providers prior to January 15, 2005, shall not be  
129 required to adjust its business license tax rate as provided in subsection 6 of  
130 this section and shall not be subject to the provisions of subsection 9 of this

131 section.

132 11. For purposes of sections 92.074 to 92.098, the director and any  
133 municipality shall have the authority to audit any telecommunications  
134 company. Notwithstanding the provisions of section 32.057, RSMo, the  
135 director of revenue shall furnish any municipality with information it  
136 requests to permit the municipality to review and audit the payments of any  
137 telecommunications company.

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

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

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

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

149 16. Any rule or portion of a rule, as that term is defined in section  
150 536.010, RSMo, that is created under the authority delegated in this section  
151 shall become effective only if it complies with and is subject to all of the  
152 provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
153 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of  
154 the powers vested with the general assembly pursuant to chapter 536, RSMo,  
155 to review, to delay the effective date, or to disapprove and annul a rule are  
156 subsequently held unconstitutional, then the grant of rulemaking authority  
157 and any rule proposed or adopted after the effective date of this section, shall  
158 be invalid and void.

92.089. 1. The general assembly finds and declares it to be the policy  
2 of the state of Missouri that costly litigation which have or may be filed by  
3 Missouri municipalities against telecommunications companies, concerning  
4 the application of certain business license taxes to certain  
5 telecommunications companies, and to certain revenues of those  
6 telecommunications companies, as set forth below, is detrimental to the  
7 economic well being of the state, and the claims of the municipal governments  
8 regarding such business licenses have neither been determined to be valid  
9 nor liquidated. The general assembly further finds and declares that the

10 resolution of such uncertain litigation, the uniformity, and the administrative  
11 convenience and cost savings to municipalities resulting from, and the  
12 revenues which will or may accrue to municipalities in the future as a result  
13 of the enactment of sections 92.074 to 92.098 are full and adequate  
14 consideration to municipalities, as the term "consideration" is used in Article  
15 III, Section 39(5) of the Missouri Constitution, for the immunity and dismissal  
16 of lawsuits outlined in subsection 2 of this section.

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

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

25       (2) That certain categories of its revenues did not qualify under the  
26 definition or wording of the ordinance as gross receipts or revenues upon  
27 which business license taxes should be calculated;  
28 such a telecommunications company is entitled to full immunity from, and  
29 shall not be liable to a municipality for, the payment of the disputed amounts  
30 of business license taxes, up to and including July 1, 2006. However, such  
31 immunity and release from liability shall not apply to any business license tax  
32 imposed in accordance with subdivisions (1) and (2) of subsection 10 of  
33 section 92.086 or sections 92.074 to 92.098 after July 1, 2006. If any  
34 municipality, prior to July 1, 2006, has brought litigation or caused an audit  
35 of back taxes for the nonpayment by a telecommunications company of  
36 municipal business license taxes, it shall immediately dismiss such lawsuit  
37 with prejudice and shall cease and desist from continuing any audit.

      92.092. All provisions of sections 92.074 to 92.098 are so essentially and  
2 inseparably connected with, and so dependent upon, each other that no such  
3 provision would be enacted without all others. If a court of competent  
4 jurisdiction enters a final judgment on the merits that is not subject to appeal  
5 and that declares any provision or part of sections 92.974 to 92.098  
6 unconstitutional or unenforceable then sections 92.074 to 92.098, in their  
7 collective entirety, are invalid and shall have no legal effect as of the date of  
8 such judgment. In such event, both telecommunications companies and  
9 municipalities shall have the same rights as existed before the enactment of



10 sections 92.074 to 92.098, but shall not be entitled to reimbursement, or  
11 required to pay reimbursement, for any sums paid in the good faith belief in  
12 the validity and constitutionality of sections 92.074 to 92.098.

92.098. The provisions of section 71.675, RSMo, are severable from the  
2 provisions of sections 92.074 to 92.092. If any portion of sections 92.074 to  
3 92.092 is declared unconstitutional or the application of any part of sections  
4 92.074 to 92.092 to any person or circumstance is held invalid, section 71.680,  
5 RSMo, and its applicability to any person or circumstance shall remain valid  
6 and enforceable. If any portion of section 71.680, RSMo, is declared  
7 unconstitutional or the application of any part of section 71.680, RSMo, to any  
8 person or circumstance is held invalid, sections 92.074 to 92.092 and its  
9 applicability to any person or circumstance shall remain valid and  
10 enforceable.

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