

SECOND REGULAR SESSION

HOUSE BILL NO. 2606

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGIRL.

5078H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and 92.095, RSMo, and to enact in lieu thereof seven new sections relating to municipal telecommunications business license taxes.

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

Section A. Sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and 92.095, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 71.675, 92.074, 92.077, 92.080, 92.086, 92.089, and 92.092, to read as follows: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 ~~92.095~~ **92.092**.

92.074. Sections 92.074 to ~~92.095~~ **92.092** shall be known as the "Municipal Telecommunications Business License Tax ~~Simplification~~ **Modernization** Act".

92.077. As used in sections 92.074 to ~~92.095~~ **92.092**, unless the context clearly requires otherwise, the following terms mean:

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

3 (1) "Business license tax", any tax, including any fee, charge, or assessment in the
 4 nature of a tax, assessed by a municipality on a telecommunications company for the
 5 privilege of doing business within the borders of such municipality, and specifically includes
 6 any tax assessed on a telecommunications company by a municipality under ~~[section 66.300~~
 7 ~~and section 80.090, section 92.073, section 94.110, 94.270, or 94.360]~~ **this chapter or**
 8 **chapter 66, 80, or 94**, or under authority granted in its charter, as well as an occupation
 9 license tax, gross receipts tax, franchise tax, or similar tax, but shall not include:

10 (a) Any state or municipal sales tax imposed under sections 144.010 to 144.525; ~~[or]~~

11 (b) Any municipal right-of-way usage fee imposed under the authority of a
 12 municipality's police powers under Section 253(c) of the Federal Telecommunications Act of
 13 1996~~[-or under sections 67.1830 to 67.1846]~~; or

14 (c) Any tax or fee levied for emergency services under section 190.292, 190.305,
 15 190.325, **or** 190.335, ~~[or 190.430,]~~ or any tax authorized by the general assembly ~~[after~~
 16 ~~August 28, 2005,]~~ for emergency services;

17 ~~[(d) Any flat tax duly imposed on or before August 28, 2005;]~~

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

19 (3) **"Gross receipts", receipts from the retail sale of telecommunications service**
 20 **subject to tax under subdivision (4) of subsection 1 of section 144.020;**

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

22 ~~[(4)]~~ (5) "Municipality", any city, county, town, or village in Missouri entitled by
 23 authority of section 66.300, section 80.090, section 92.073, section 94.110, 94.270, or 94.360,
 24 or under authority granted in its charter to assess a business license tax on
 25 telecommunications companies;

26 ~~[(5)]~~ (6) "Telecommunications company", any company doing business in this state
 27 that provides telecommunications service. **The term "telephone company", as used in**
 28 **sections 94.110, 94.270, and 94.360, shall have the same meaning as**
 29 **"telecommunications company";**

30 ~~[(6)]~~ (7) "Telecommunications service", the same meaning as such term is defined in
 31 section 144.010. The term ~~["telephone company", as used in sections 94.110, 94.270, and~~
 32 ~~94.360, shall have the same meaning as telecommunications company as defined in this~~
 33 ~~section]~~ **shall include, but not be limited to, telephone service, telecommunications, local**
 34 **exchange service, local exchange telephone transmission service, exchange telephone**
 35 **service, mobile telecommunications service, and voice over internet protocol services.**

92.080. Notwithstanding any provisions of this chapter or chapter 66, 80, or 94, or the
 2 provisions of any municipal charter, after August 28, ~~[2005]~~ **2024**, no municipality ~~[may]~~
 3 **shall** impose any business license tax~~[-, tower tax, or antennae tax]~~ on a telecommunications
 4 company except as specified in sections 92.074 to ~~[92.095]~~ **92.092.**

92.086. 1. On or before January 1, ~~[2006]~~ **2025**, the director shall publish a list of the municipalities ~~[which]~~ **that** have, prior to August 28, ~~[2005]~~ **2024**, enacted ordinances imposing a business license tax on a telecommunications company, **except that such list shall not include municipalities that imposed a flat fee instead of a tax or fee based on gross receipts as the municipality's business license tax.** The list shall contain:

- (1) The name of the municipality imposing the tax;
- (2) The name of the tax as denoted by the municipality;
- (3) The citation to the municipal code provisions imposing the tax; and
- (4) The percentage of gross receipts.

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

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

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

~~3.]~~ **2.** Beginning on July 1, ~~[2006]~~ **2025**, the director shall henceforth collect, administer, and distribute telecommunications business license tax revenues in accordance with the provisions of sections 92.074 to ~~[92.095]~~ **92.092**.

~~[4.]~~ **3.** Notwithstanding the provisions of any municipal business license tax ordinance, effective July 1, ~~[2006]~~ **2025**, all business license taxes shall ~~[be based solely and exclusively on]~~ **not exceed** those gross receipts of telecommunications companies for the retail sale of telecommunications services ~~[which are subject to taxation under sections 144.010 and 144.020]~~. Any provisions in any municipal taxing ordinances ~~[which provide different]~~ **that adopt** definitions, rules, or provisions **that purport to impose any business**

38 **license tax on gross receipts in excess of telecommunications service including, but not**
39 **limited to, interstate or international telecommunications services as described in**
40 **paragraph (b) of subdivision (4) of subsection 1 of section 144.020**, are expressly
41 preempted and are null and void.

42 [5.] 4. The director is authorized to promulgate regulations to establish the
43 appropriate procedures for collecting, administering, and distributing such taxes. A
44 telecommunications company shall file a quarterly return with the director with an attached
45 schedule setting forth the total amount of taxable gross receipts for the quarter and the amount
46 of business license tax due to each municipality. The director shall distribute the appropriate
47 amounts, as set forth in this section, to the municipalities. In exchange for its collection,
48 administration, and distribution functions, the department of revenue shall retain a collection
49 fee of up to one percent [(), not to exceed the actual costs incurred()], on all funds collected
50 and distributed and shall be allowed to collect the interest off such funds during the time
51 between collection and distribution. In no event shall the director fail to distribute the
52 collected funds to a municipality more than thirty days after the collection of the funds.

53 ~~[6. It is the intent of the general assembly that sections 92.074 to 92.095 comply with~~
54 ~~Article X, Section 22 of the Missouri Constitution, so that the application of sections 92.074~~
55 ~~to 92.095 shall have a revenue neutral effect. Because business license taxes shall now be~~
56 ~~based on the gross receipts subject to the sales tax, it is anticipated that the base of the existing~~
57 ~~business license taxes in most cases shall be broadened, so in order to comply with Article X,~~
58 ~~Section 22 of the Missouri Constitution, the municipality shall adjust the gross receipts~~
59 ~~percentage rate identified by the director in accordance with subsection 2 of this section so~~
60 ~~that the amount collectible, in total from all telecommunications companies, excluding the~~
61 ~~collection fee authorized in subsection 5 as defined herein, before and immediately after~~
62 ~~enactment remains the same in each municipality. If the determination is made by a~~
63 ~~municipality that in order to comply with Article X, Section 22 of the Missouri Constitution~~
64 ~~the gross receipts percentage rate must be increased, such increase shall be passed by a~~
65 ~~majority vote of the qualified voters voting in that municipality. The existing tax base shall~~
66 ~~be an amount equal to the total amount of telecommunications business license taxes~~
67 ~~collected by a municipality for fiscal year 2005, increased by fifty percent of the difference~~
68 ~~between such amount and the business license tax receipts that would have been yielded by~~
69 ~~applying the gross receipts percentage rate identified in accordance with subsection 1 of this~~
70 ~~section to the total gross receipts for all wireless telecommunications services provided by~~
71 ~~telecommunications companies as identified in 47 U.S.C. Section 332(D)(1) and 47 C.F.R.~~
72 ~~Parts 22 or 24 in such fiscal year attributable to the municipality. Based upon the rate~~
73 ~~information received from the director under this section, each municipality shall, no later~~
74 ~~than April 1, 2006, promulgate and publish the revenue neutral rates to be applied in each~~

75 municipality. Such tax rates shall be the applicable business license tax rate for bills rendered
76 on or after July 1, 2006. Any percentages in any ordinance that are contrary to that
77 established by the municipality herein are null and void. If any municipal business license tax
78 ordinance as of January 1, 2005, had a provision stating that the tax only applied to business
79 customers, the new calculated rate under this section also shall be determined based only on
80 business customers and shall apply only to business customers.

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

90 ~~8.]~~ **5.** The director shall be notified in writing within thirty days of any change in the
91 municipal business license tax rate adopted by a municipality. The director shall promulgate
92 such rate changes, but such rate changes ~~[may only]~~ **shall** take effect **only** on the first day of a
93 calendar quarter and only after a minimum of ninety days notice from the director to a
94 telecommunications company. Any subsequent increase in the business license tax rate
95 passed through an ordinance by a municipality ~~[which]~~ **that** is above that rate as ~~[established~~
96 ~~by the municipality under]~~ **identified in accordance with** subsection ~~[6]~~ **1** of this section
97 shall be passed by a majority vote of the qualified voters voting in that municipality. No
98 municipal tax rate shall exceed the cap provided in subsection ~~[9]~~ **6** of this section.

99 ~~[9-]~~ **6.** Notwithstanding the provisions of subsections ~~[3]~~ **2** to ~~[8]~~ **5** of this section or
100 any other provision of law to the contrary, ~~[for any municipality not subject to the provisions~~
101 ~~of subsection 10 of this section,]~~ the maximum rate of taxation on gross receipts shall not
102 exceed five percent for bills rendered on or after July 1, ~~[2006, except if the business license~~
103 ~~tax rate for any municipality, as calculated in subsection 6 of this section, or if necessary,~~
104 ~~subsection 7 of this section, is determined to be greater than five percent, then,~~
105 ~~notwithstanding the provisions of such subsections, the business license tax rates for such~~
106 ~~municipality on and after July 1, 2006, shall be as follows:~~

107 (1) ~~For bills rendered between July 1, 2006, and June 30, 2008, the rate shall be the~~
108 ~~actual adjusted rate as determined by subsection 6 of this section, or, if necessary, subsection~~
109 ~~7 of this section;~~

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

112 (3) ~~For all bills rendered on and after July 1, 2010, five percent]~~ **2025.**

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

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

130 ~~11.]~~ **7.** For purposes of sections 92.074 to ~~[92.095]~~ **92.092**, the director and any
131 municipality shall have the authority to audit any telecommunications company.
132 Notwithstanding the provisions of section 32.057, the director of revenue shall furnish any
133 municipality with information it requests to permit the municipality to review and audit the
134 payments of any telecommunications company.

135 ~~[12.]~~ **8.** The statute of limitations shall be three years for the alleged nonpayment or
136 underpayment of the business license tax.

137 ~~[13.]~~ **9.** Any telecommunications company is authorized to pass through to its retail
138 customers all or part of the business license tax.

139 ~~[14.]~~ **10.** The provisions of ~~[subsection 5 of section 144.190]~~ **section 144.013** and
140 subdivision (3) of subsection 12 of section 32.087 shall apply to the tax imposed under
141 sections 92.074 to ~~[92.095]~~ **92.092**.

142 ~~[15.]~~ **11.** Unless specifically stated otherwise in sections 92.074 to ~~[92.095]~~ **92.092**,
143 taxpayer remedies, enforcement mechanisms, tax refunds, tax protests, assessments, and all
144 other procedures shall be the same as those provided in chapter 144.

145 ~~[16.]~~ **12.** Any rule or portion of a rule, as that term is defined in section 536.010, that
146 is created under the authority delegated in this section shall become effective only if it
147 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
148 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with

149 the general assembly pursuant to chapter 536 to review, to delay the effective date, or to
150 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
151 rulemaking authority and any rule proposed or adopted after August 28, [2005] 2024, shall be
152 invalid and void.

92.089. 1. The general assembly finds and declares ~~[it to be the policy of the state of~~
2 ~~Missouri that costly litigation which have or may be filed by Missouri municipalities against~~
3 ~~telecommunications companies, concerning the application of certain business license taxes~~
4 ~~to certain telecommunications companies, and to certain revenues of those~~
5 ~~telecommunications companies, as set forth below, is detrimental to the economic well~~
6 ~~being of the state, and the claims of the municipal governments regarding such business~~
7 ~~licenses have neither been determined to be valid nor liquidated. The general assembly~~
8 ~~further finds and declares that the resolution of such uncertain litigation, the uniformity, and~~
9 ~~the administrative convenience and cost savings to municipalities resulting from, and the~~
10 ~~revenues which will or may accrue to municipalities in the future as a result of the enactment~~
11 ~~of sections 92.074 to 92.095 are full and adequate consideration to municipalities, as the term~~
12 ~~"consideration" is used in Article III, Section 39(5) of the Missouri Constitution, for the~~
13 ~~immunity and dismissal of lawsuits outlined in subsection 2 of this section.~~

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

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

20 (2) ~~That certain categories of its revenues did not qualify under the definition or~~
21 ~~wording of the ordinance as gross receipts or revenues upon which business license taxes~~
22 ~~should be calculated;~~

23

24 ~~such a telecommunications company is entitled to full immunity from, and shall not be liable~~
25 ~~to a municipality for, the payment of the disputed amounts of business license taxes, up to and~~
26 ~~including July 1, 2006. However, such immunity and release from liability shall not apply to~~
27 ~~any business license tax imposed in accordance with subdivisions (1) and (2) of subsection 10~~
28 ~~of section 92.086 or sections 92.074 to 92.095 after July 1, 2006. If any municipality, prior to~~
29 ~~July 1, 2006, has brought litigation or caused an audit of back taxes for the nonpayment by a~~
30 ~~telecommunications company of municipal business license taxes, it shall immediately~~
31 ~~dismiss such lawsuit without prejudice and shall cease and desist from continuing any audit,~~
32 ~~except those cities described in subsection 10 of section 92.086] that sections 92.074 to~~
33 **92.092 apply to an open-ended class of municipalities, consistent with requirements in**

34 **Article III, Section 40(30) of the Constitution of Missouri and cases interpreting such**
 35 **provision, and that sections 92.074 to 92.092 cover all telephonic services, regardless of**
 36 **the type of technology used to provide the services, consistent with *City of Jefferson City,***
 37 ***MO. v. Cingular Wireless, LLC*, 531 F.3d 595 (8th Cir. 2008). Sections 92.074 to 92.092**
 38 **reaffirm legislative intent that gross receipts from the provision of interstate**
 39 **telecommunications service and international telecommunications service in this state**
 40 **are not subject to the business license tax. Accordingly, *City of Aurora v. Spectra***
 41 ***Communications Group, LLC*, 592 S.W.3d 764 (Mo. banc 2019) and *Collector of***
 42 ***Winchester v. Charter Communications, Inc.*, 660 S.W.3d 405 (Mo. Ct. App. E.D. 2022)**
 43 **are abrogated to the extent inconsistent with sections 92.074 to 92.092.**

44 **2. The general assembly finds and declares that sections 92.074 to 92.092 do not**
 45 **authorize the adoption of a new tax or the increase of an existing tax. No provision of**
 46 **sections 92.074 to 92.092 shall be construed to:**

- 47 **(1) Authorize the expansion of any business license tax base by a municipality;**
 48 **(2) Authorize the increase of any business license tax rate by a municipality; or**
 49 **(3) Otherwise implicate Article X, Section 22 of the Constitution of Missouri.**

92.092. All provisions of sections 92.074 to 92.089 are so essentially and inseparably
 2 connected with, and so dependent upon, each other that no such provision would be enacted
 3 without all others. If a court of competent jurisdiction enters a final judgment on the merits
 4 that is not subject to appeal and that declares any provision or part of sections 92.074 to
 5 92.089 unconstitutional or unenforceable ~~[then]~~, sections 92.074 to 92.089, in their collective
 6 entirety, are invalid and shall have no legal effect as of the date of such judgment. In such
 7 event, both telecommunications companies and municipalities shall have the same rights as
 8 existed before August 28, ~~[2005]~~ **2024**, but shall not be entitled to reimbursement, or required
 9 to pay reimbursement, for any sums paid in the good faith belief in the validity and
 10 constitutionality of sections 92.074 to 92.089.

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

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

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

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

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

2 ~~[92.095. The provisions of section 71.675 are severable from the~~
3 ~~provisions of sections 92.074 to 92.092. If any portion of sections 92.074 to~~
4 ~~92.092 is declared unconstitutional or the application of any part of sections~~
5 ~~92.074 to 92.092 to any person or circumstance is held invalid, section 71.675~~
6 ~~and its applicability to any person or circumstance shall remain valid and~~
7 ~~enforceable. If any portion of section 71.675 is declared unconstitutional or~~
8 ~~the application of any part of section 71.675 to any person or circumstance is~~
9 ~~held invalid, sections 92.074 to 92.092 and its applicability to any person or~~
~~circumstance shall remain valid and enforceable.]~~

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