

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 582

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Pre-filed December 1, 2005, and ordered printed.

Read 2nd time January 9, 2006, and referred to the Committee on Commerce, Energy and the Environment.

Reported from the Committee March 15, 2006, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 28, 2006. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

3131S.01P

AN ACT

To repeal section 92.086, RSMo, and to enact in lieu thereof one new section relating to municipal taxation of telecommunication, with an emergency clause.

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

Section A. Section 92.086, RSMo, is repealed and one new section enacted
2 in lieu thereof, to be known as section 92.086, to read as follows:

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 shall
4 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 of
10 gross receipts if the municipality in question at the time of August 28, 2005, had
11 an ordinance which imposed a flat fee instead of a fee based on gross receipts as
12 its business license tax. In compiling the list, the director shall collect
13 information from telecommunications companies, municipalities, municipal codes,
14 and other reliable sources.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

30 3. Beginning on July 1, 2006, the director shall henceforth collect,
31 administer, and distribute telecommunications business license tax revenues in
32 accordance with the provisions of sections 92.074 to 92.095.

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

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

51 distribute the collected funds to a municipality more than thirty days after the
52 collection of the funds.

53 6. It is the intent of the general assembly that sections 92.074 to 92.095
54 comply with article X, section 22 of the Missouri Constitution, so that the
55 application of sections 92.074 to 92.095 shall have a revenue-neutral
56 effect. Because business license taxes shall now be based on the gross receipts
57 subject to the sales tax, it is anticipated that the base of the existing business
58 license taxes in most cases shall be broadened, so in order to comply with article
59 X, section 22 of the Missouri Constitution, the municipality shall adjust the gross
60 receipts percentage rate identified by the director in accordance with subsection
61 2 of this section so that the amount collectible, in total from all
62 telecommunications companies, excluding the collection fee authorized in
63 subsection 5 as defined herein, before and immediately after enactment remains
64 the same in each municipality. If the determination is made by a municipality
65 that in order to comply with article X, section 22 of the Missouri Constitution the
66 gross receipts percentage rate must be increased, such increase shall be passed
67 by a majority vote of the qualified voters voting in that municipality. The
68 existing tax base shall be an amount equal to the total amount of
69 telecommunications business license taxes collected by a municipality for fiscal
70 year 2005, increased by fifty percent of [the difference between such amount and]
71 the business license tax receipts that would have been yielded by applying the
72 gross receipts percentage rate identified in accordance with subsection 1 of this
73 section to the total gross receipts for all wireless telecommunications services
74 provided by telecommunications companies as identified in 47 U.S.C. Section
75 332(D)(1) and 47 C.F.R. Parts 22 or 24 in such fiscal year attributable to the
76 municipality. Based upon the rate information received from the director under
77 this section, each municipality shall, no later than April 1, 2006, promulgate and
78 publish the revenue-neutral rates to be applied in each municipality. Such tax
79 rates shall be the applicable business license tax rate for bills rendered on or
80 after July 1, 2006. Any percentages in any ordinance that are contrary to that
81 established by the municipality herein are null and void. If any municipal
82 business license tax ordinance as of January 1, 2005, had a provision stating that
83 the tax only applied to business customers, the new calculated rate under this
84 section also shall be determined based only on business customers and shall
85 apply only to business customers.

86 7. On or before April 1, 2007, the director, in consultation with the state

87 auditor and municipalities, shall examine revenues collected and forecast whether
88 a shortfall or excess in municipal revenues for each municipality is likely to occur
89 for the fiscal year ending June 30, 2007, due to data reporting errors or other
90 errors in the calculation of the revenue-neutral tax rate. Section 32.057, RSMo,
91 shall not restrict the disclosure of information to perform such consultation. If
92 a shortfall or excess is expected, the director, after review and comment from
93 municipalities and telecommunications companies, shall promulgate and publish
94 an adjustment in the rate in such municipalities. Such tax rate adjustment, if
95 necessary, shall apply to bills issued after July 1, 2007.

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

106 9. Notwithstanding the provisions of subsections 3 to 8 of this section or
107 any other provision of law to the contrary, for any municipality not subject to the
108 provisions of subsection 10 of this section, the maximum rate of taxation on gross
109 receipts shall not exceed five percent for bills rendered on or after July 1, 2006,
110 except if the business license tax rate for any municipality, as calculated in
111 subsection 6 of this section, or if necessary, subsection 7 of this section, is
112 determined to be greater than five percent, then, notwithstanding the provisions
113 of such subsections, the business license tax rates for such municipality on and
114 after July 1, 2006, shall be as follows:

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

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

121 (3) For all bills rendered on and after July 1, 2010, five percent.

122 10. (1) Any municipality which prior to November 4, 1980, had an

123 ordinance imposing a business license tax on telecommunications companies
124 which specifically included the words "wireless", "cell phones", or "mobile phones"
125 in its business license tax ordinance as revenues upon which a business license
126 tax 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 this
130 section and shall not be subject to the provisions of subsection 9 of this section.

131 (2) Any municipality which has an ordinance or an amendment to an
132 ordinance imposing a business license tax on telecommunications companies
133 which was authorized or amended by a public vote subsequent to November 4,
134 1980, and such authorization specifically included the terms "wireless", "cell
135 phones", or "mobile telephones" as revenues upon which a business license tax
136 could be imposed, and had not limited its tax to local exchange telephone service
137 or landlines, and had taken affirmative action to collect such tax from wireless
138 telecommunications providers prior to January 15, 2005, shall not be required to
139 adjust its business license tax rate as provided in subsection 6 of this section and
140 shall not be subject to the provisions of subsection 9 of this section.

141 11. For purposes of sections 92.074 to 92.095, the director and any
142 municipality shall have the authority to audit any telecommunications
143 company. Notwithstanding the provisions of section 32.057, RSMo, the director
144 of revenue shall furnish any municipality with information it requests to permit
145 the municipality to review and audit the payments of any telecommunications
146 company.

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

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

151 14. The provisions of subsection 5 of section 144.190, RSMo, and
152 subdivision (3) of subsection 12 of section 32.087, RSMo, shall apply to the tax
153 imposed under sections 92.074 to 92.095.

154 15. Unless specifically stated otherwise in sections 92.074 to 92.095,
155 taxpayer remedies, enforcement mechanisms, tax refunds, tax protests,
156 assessments, and all other procedures shall be the same as those provided in
157 chapter 144, RSMo.

158 16. Any rule or portion of a rule, as that term is defined in section

159 536.010, RSMo, that is created under the authority delegated in this section shall
160 become effective only if it complies with and is subject to all of the provisions of
161 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and
162 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
163 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
164 date, or to disapprove and annul a rule are subsequently held unconstitutional,
165 then the grant of rulemaking authority and any rule proposed or adopted after
166 August 28, 2005, shall be invalid and void.

Section B. Because of the need to ensure the proper taxation of
2 telecommunications services, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace and safety, and is
4 hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

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Bill

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