HOUSE BILL 1492

Q7 4lr3119

By: **Delegates Hixson, Harper, and Stukes**
Introduced and read first time: February 24, 2014
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

AN ACT concerning

Communications Tax Reform Act of 2014

FOR the purpose of repealing the public service company franchise tax on the gross receipts of telephone companies; repealing the boxing and wrestling tax on certain telecasts; imposing the sales and use tax on certain communications services; establishing the sales and use tax rate for certain communications services; requiring that the revenue from the sales and use tax on communications services be distributed to the Rural Broadband Assistance Fund and the General Fund of the State in a certain manner; exempting from the sales and use tax certain personal property used to conduct certain activities related to the dissemination and production of a communications service; defining certain terms; providing for the termination of certain provisions of this Act; and generally relating to the taxation of consumers and providers of communications services.

BY repealing and reenacting, without amendments,
Article – Economic Development
Section 5–1101
Annotated Code of Maryland
(2008 Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Economic Development
Section 5–1102
Annotated Code of Maryland
(2008 Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 2–1302.1, 6–101, 6–104, 8–401, 8–402, 8–409, and 11–101(m)
Annotated Code of Maryland

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

(2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 8–403(a)
Annotated Code of Maryland
(2010 Replacement Volume and 2013 Supplement)

BY repealing
Article – Tax – General
Section 8–406(c) and 8–407
Annotated Code of Maryland
(2010 Replacement Volume and 2013 Supplement)

BY adding to
Article – Tax – General
Section 11–101(c–1), 11–104(j), and 11–210(f)
Annotated Code of Maryland
(2010 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Economic Development

5–1101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the Maryland Rural Broadband Coordination Board established under Title 13, Subtitle 5 of this article.

(c) "Fund" means the Rural Broadband Assistance Fund established under § 5–1102 of this subtitle.

5–1102.

(a) There is a Rural Broadband Assistance Fund in the Department.

(b) The purpose of the Fund is to assist in the establishment of broadband communication services in rural and underserved areas of the State.

(c) The Department shall administer the Fund.

(d) (1) The Fund is a special, nonlapsing fund that is not subject to reversion under § 7–302 of the State Finance and Procurement Article.

(2) The Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(e) The Fund consists of:

(1) money appropriated in the State budget to the Fund;

(2) money appropriated in the State budget to the Maryland Economic Development Assistance Fund under Subtitle 3 of this title for the purpose of assisting in the establishment of broadband communication services in rural and underserved areas of the State;

(3) federal money allocated or granted to the Fund; **[**and**]**

(4) REVENUE FROM THE SALES AND USE TAX ON COMMUNICATIONS SERVICES DISTRIBUTED TO THE FUND UNDER § 2–1302.1(C) OF THE TAX – GENERAL ARTICLE; AND

[(4)**](5)** any other money from any source accepted for the benefit of the Fund.

(f) The Fund may be used only for planning, construction, and maintenance of broadband communication services and equipment in rural and underserved areas and related activities.

(g) (1) The Treasurer shall invest the money in the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(h) The Department shall make payments from the Fund within 30 days after notice of a decision of the Board under § 13–504(3) of this article.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Tax – General

2–1302.1.

(a) Except as **[**otherwise**]** provided in **SUBSECTION (B) OF** this section, after making the distributions required under §§ 2–1301 and 2–1302 of this subtitle, of the sales and use tax collected on short–term vehicle rentals under § 11–104(c) of this article the Comptroller shall distribute:

(1) 45% to the Transportation Trust Fund established under § 3–216 of the Transportation Article; and

(2) the remainder to the Chesapeake Bay 2010 Trust Fund.

(b) For each fiscal year beginning on or before July 1, 2014, after the distribution required under subsection (a)(1) of this section, the Comptroller shall distribute the remainder of the sales and use tax collected on short–term vehicle rentals under § 11–104(c) of this article as follows:

(1) to the General Fund of the State**[**:

(i) $15,169,444 for the fiscal year beginning July 1, 2011;

(ii) $10,076,582 for the fiscal year beginning July 1, 2012;

(iii) $6,535,845 for the fiscal year beginning July 1, 2013; and

(iv)**]** $3,049,199 for the fiscal year beginning July 1, 2014; and

(2) the remainder to the Chesapeake Bay 2010 Trust Fund.

(C) AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2–1301 AND 2–1302 OF THIS SUBTITLE, OF THE SALES AND USE TAX COLLECTED ON COMMUNICATIONS SERVICES UNDER § 11–104(J) OF THIS ARTICLE, THE COMPTROLLER SHALL DISTRIBUTE:

(1) FOR EACH FISCAL YEAR BEGINNING BEFORE JULY 1, 2020:

(I) 7.5% TO THE RURAL BROADBAND ASSISTANCE FUND ESTABLISHED UNDER § 5–1102 OF THE ECONOMIC DEVELOPMENT ARTICLE; AND

(II) THE REMAINDER TO THE GENERAL FUND OF THE STATE; AND

(2) FOR EACH FISCAL YEAR BEGINNING ON OR AFTER JULY 1, 2020, ALL REVENUE TO THE GENERAL FUND OF THE STATE.

6–101.

(a) In this title the following words have the meanings indicated.

(b) "Boxing or wrestling contest" means a boxing, kick boxing, sparring, wrestling, or mixed martial arts contest, event, exhibition, or match.

(c) "Telecast" means**[**:

(1)**]** a closed circuit telecast**[**;

(2) a subscription television broadcast; or

(3) a pay–per–view cable or satellite television broadcast**]**.

6–104.

[(a)**]** The boxing and wrestling tax rate is:

(1) **[**except as provided in subsection (b) of this section,**]** for charges to view a telecast of a boxing or wrestling contest, 10% of the gross receipts;

(2) except as provided in item (3) of this subsection, for charges for admission to a boxing or wrestling contest, the greater of:

(i) 10% of the gross receipts; or

(ii) $200; and

(3) for charges for admission to a boxing or wrestling contest, 5% of the gross receipts if the contest is conducted by:

(i) the Maryland National Guard; or

(ii) in Allegany County, a post of the Veterans of Foreign Wars or the American Legion.

[(b) For charges to view a telecast of a boxing or wrestling contest, if gross receipts subject to the boxing and wrestling tax are also subject to the sales and use tax, the boxing and wrestling tax rate shall be set so the total tax rate does not exceed 10% of the gross receipts.**]**

8–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Delivered for final consumption" means delivered by a public service company in its service area as measured at the customer meter or other point of final delivery.

(c) (1) "Gross receipts" means total operating revenue.

(2) "Gross receipts" includes**[**:

(i)**]** gross or total earnings and total receipts**[**;

(ii) for a telephone company, the full amount of approved and applicable federal and State tariff charges for telephone lifeline service without the discount provided by § 8–201(c) of the Public Utilities Article; and

(iii) for a telecommunications company providing interstate long distance telecommunications service, the gross charges from the sale of long distance telecommunications service that originates or terminates in the State and for which a charge is made to a service address located in the State, regardless of where the amount is billed or paid**]**.

(3) "Gross receipts" does not include:

(i) any revenue that a public service company derives from an activity other than an electric**[**,**]** **OR** gas**[**, or telephone**]** business; or

(ii) net uncollectible revenue.

(4) **[**For a public service company engaged in a telephone business in the State, gross receipts does not include:

(i) gross charges from the sale by the public service company to another public service company subject to the tax imposed by this subtitle of a service or product for resale;

(ii) gross charges from the sale by the public service company of Internet access service by which a connection is provided between a computer and the Internet; or

(iii) gross charges from the sale of telecommunications service obtained by using a prepaid telephone calling arrangement, as defined in § 11–101 of this article.

(5)**]** For a public service company engaged in the transmission, distribution, or delivery of electricity or gas in the State:

(i) "gross receipts" includes:

1. except as provided in item (ii)2 and 3 of this paragraph, gross charges for the transmission, distribution, or delivery of electricity or natural gas or for distribution or delivery–related services; and

2. competitive transition charges, intangible transition charges, and any other surcharge or other cost–recovery mechanism authorized for recovery of transition costs or the costs of demand side management or other energy conservation programs, universal service or other public purpose programs, or consumer education programs; and

(ii) "gross receipts" does not include:

1. gross charges from the sale of electricity or natural gas;

2. gross charges from the transmission, distribution, or delivery of electricity or natural gas to another public service company subject to the tax imposed under § 8–402 of this subtitle if the buyer intends to resell the electricity or natural gas; or

3. gross charges from an interstate transmission network or from the transmission, distribution, or delivery of electricity or natural gas to a customer located in another state.

(d) **[**"Long distance telecommunications service" means telecommunications service for a telecommunication that does not originate and terminate in the same local calling area.

(e)**]** "Production activity" has the meaning stated in § 11–101 of this article.

[(f)**] (E)** "Public service company" means a person**[**:

(1) engaged in a telephone business in the State; or

(2)**]** engaged in the transmission, distribution, or delivery of electricity or natural gas in the State.

8–402.

(a) A franchise tax, measured by gross receipts, is imposed, for each calendar year, on each public service company**[**:

(1) engaged in a telephone business in the State; or

(2)**]** engaged in the transmission, distribution, or delivery of electricity or natural gas in the State.

(b) The tax imposed under subsection (a) of this section does not apply to a public service company that is:

(1) a county;

(2) a municipal corporation; or

(3) a nonprofit electric cooperative.

8–403.

(a) The rate of the franchise tax imposed under § 8–402 of this subtitle is 2% of gross receipts derived from business in the State.

8–406.

[(c) (1) To prevent actual multiple taxation of the sale of interstate long distance telecommunications service, a long distance telecommunications company, upon proof that it has paid a properly due excise, sales and use, or gross receipts tax in another state on a sale the gross receipts from which are subject to taxation under this subtitle, shall be allowed a credit against the public service company franchise tax for the amount paid.

(2) The credit permitted under this subsection may not exceed the tax imposed under this subtitle.**]**

[8–407.

A telephone company may claim a credit against the public service company franchise tax equal to all approved and applicable federal and State tariff charges for telephone lifeline service not billed to eligible subscribers as provided in § 8–201 of the Public Utilities Article.**]**

8–409.

[(a) The public service company franchise tax with respect to gross receipts from telecommunications service shall be added to and disclosed as an element of the public service company's charge to the customer for the service.

(b)**]** A public service company may surcharge its customers for the public service company franchise tax imposed under § 8–402.1 of this subtitle.

11–101.

(C–1) "COMMUNICATIONS SERVICE" MEANS:

(1) LOCAL EXCHANGE OR INTEREXCHANGE TELEPHONE SERVICE THAT IS SUBJECT TO REGULATION BY THE PUBLIC SERVICE COMMISSION;

(2) CELLULAR TELEPHONE SERVICE OR OTHER MOBILE TELECOMMUNICATIONS SERVICE;

(3) "900", "976", "915", AND OTHER "900"–TYPE TELECOMMUNICATIONS SERVICE;

(4) CUSTOM CALLING SERVICE PROVIDED IN CONNECTION WITH BASIC TELEPHONE SERVICE;

(5) TELEPHONE ANSWERING SERVICE;

(6) PREPAID TELEPHONE CALLING ARRANGEMENTS;

(7) VOICE OVER INTERNET PROTOCOL SERVICE, AS DEFINED IN § 8–601 OF THE PUBLIC UTILITIES ARTICLE;

(8) PAY–PER–VIEW TELEVISION SERVICE;

(9) CABLE TELEVISION SERVICE;

(10) SATELLITE TELEVISION SERVICE;

(11) SATELLITE RADIO SERVICE;

(12) EQUIPMENT RENTED OR SOLD BY A CABLE TELEVISION PROVIDER OR SATELLITE TELEVISION PROVIDER TO A SUBSCRIBER THAT IS NECESSARY TO RECEIVE TELEVISION SERVICE, INCLUDING A CABLE BOX OR A SATELLITE DISH; OR

(13) AUDIO OR AUDIOVISUAL CONTENT STREAMED THROUGH THE INTERNET, INCLUDING TELEVISION, MOTION PICTURES, OR RADIO.

(m) "Taxable service" means:

(1) fabrication, printing, or production of tangible personal property by special order;

(2) commercial cleaning or laundering of textiles for a buyer who is engaged in a business that requires the recurring service of commercial cleaning or laundering of the textiles;

(3) cleaning of a commercial or industrial building;

[(4) cellular telephone or other mobile telecommunications service;

(5) "900", "976", "915", and other "900"–type telecommunications service;

(6) custom calling service provided in connection with basic telephone service;

(7) a telephone answering service;

(8) pay per view television service;**]**

(4) A COMMUNICATIONS SERVICE;

[(9)**] (5)** credit reporting;

[(10)**] (6)** a security service, including:

(i) a detective, guard, or armored car service; and

(ii) a security systems service;

[(11)**] (7)** a transportation service for transmission, distribution, or delivery of electricity or natural gas, if the sale or use of the electricity or natural gas is subject to the sales and use tax; **OR**

[(12) a prepaid telephone calling arrangement; or

(13)**] (8)** the privilege given to an individual under Article 2B, § 12–107(b)(10) of the Code to consume wine that is not purchased from or provided by a restaurant, club, or hotel.

11–104.

(J) THE SALES AND USE TAX RATE FOR A COMMUNICATIONS SERVICE IS 4% OF THE TAXABLE PRICE.

11–210.

(F) (1) IN THIS SUBSECTION, "COMMUNICATIONS SERVICE PROVIDER" MEANS A PERSON PRINCIPALLY ENGAGED IN THE BUSINESS OF DISTRIBUTING, TRANSMITTING, MONITORING, SWITCHING, ROUTING, OR PRODUCING A TAXABLE COMMUNICATIONS SERVICE.

(2) THE SALES AND USE TAX DOES NOT APPLY TO A SALE OF TANGIBLE PERSONAL PROPERTY TO A COMMUNICATIONS SERVICE PROVIDER IF THE PROPERTY IS:

(I) USED DIRECTLY AND PREDOMINANTLY IN THE DISTRIBUTION, TRANSMISSION, MONITORING, SWITCHING, ROUTING, OR PRODUCTION OF A TAXABLE COMMUNICATIONS SERVICE; OR

(II) INTEGRAL OR NECESSARY FOR THE INSTALLATION, OPERATION, OR MAINTENANCE OF THE PROPERTY DESCRIBED IN ITEM (I) OF THIS PARAGRAPH.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act takes effect July 1, 2014, and shall remain effective until the taking effect of the termination provision specified in Section 3 of Chapter 269 of the Acts of the General Assembly of 2006. If that termination provision takes effect, Section 1 of this Act shall be abrogated and of no further force and effect. This Act may not be interpreted to have any effect on that termination provision.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.