

CF 7r2682

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Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 1997

CHAPTER _____

1 AN ACT concerning

2 **Telecommunications Tax Reform**

3 FOR the purpose of ~~altering the definitions of "public service company" and "gross~~
4 ~~receipts" under the public service company franchise tax; defining~~
5 ~~"telecommunications service" for purposes of the public service company franchise~~
6 ~~tax; altering the public service company franchise tax rate for a person providing a~~
7 ~~telecommunications service in the State; providing that the public service company~~
8 franchise tax with respect to gross receipts from telecommunications service shall be
9 added to and disclosed as an element of the charge to the customer for the service;
10 limiting a certain subtraction modification under the income tax for gross receipts
11 subject to the public service company franchise tax to gross receipts not derived
12 from telecommunications service; providing a credit against the ~~corporation income~~
13 ~~taxes~~ State income tax for certain property taxes paid by a public utility that is a
14 telecommunications company; ~~imposing the sales and use tax on the sale of prepaid~~
15 ~~telephone calling cards; imposing the sales and use tax on certain Internet access~~
16 ~~service; altering the definition of "operating personal property" for property tax~~
17 ~~purposes for a public utility that is a telecommunications provider; repealing the~~
18 ~~sales and use tax on certain telecommunications services; altering the application of~~
19 ~~the sales and use tax to certain services; requiring an addition modification under~~
20 ~~the income tax in the amount of a certain credit; requiring the Public Service~~
21 Commission to ~~require~~ determine and require a certain reduction in ~~local~~ telephone
22 rates ~~to reflect the elimination of a certain tax formerly included in the rates;~~
23 prohibiting a local telephone service provider from adding a certain tax to its charge
24 to the customer until a certain reduction in rates is effective; providing for the
25 effective dates and application of this Act; and generally relating to the taxation of

2

1 telecommunications companies and telecommunications services in the State.

2 BY repealing and reenacting, with amendments,

3 Article - Tax - General

4 ~~Section 8-401, 8-403, 8-409, 10-307(e), and 11-101(i)(1) and (k)(9) and (10)~~

5 ~~Section 8-409 and 10-307(e)~~

6 Annotated Code of Maryland

7 (1988 Volume and 1996 Supplement)

8 ~~BY repealing and reenacting, without amendments,~~

9 ~~Article - Tax - General~~

10 ~~Section 8-402~~

11 ~~Annotated Code of Maryland~~

12 ~~(1988 Volume and 1996 Supplement)~~

13 BY adding to

14 Article - Tax - General

15 Section ~~10-306(c) and 10-708 and 11-101(e-1) and (k)(11)~~

16 Annotated Code of Maryland

17 (1988 Volume and 1996 Supplement)

18 ~~BY repealing and reenacting, with amendments,~~

19 ~~Article - Tax - Property~~

20 ~~Section 1-101(u)~~

21 ~~Annotated Code of Maryland~~

22 ~~(1994 Replacement Volume and 1996 Supplement)~~

23 ~~BY repealing and reenacting, with amendments,~~

24 ~~Article - Tax - General~~

25 ~~Section 11-101(k)~~

26 ~~Annotated Code of Maryland~~

27 ~~(1988 Volume and 1996 Supplement)~~

28 ~~(As enacted by Section 1 of this Act)~~

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article - Tax - General**

32 ~~8-401.~~

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

34 (b) (1) ~~"Gross receipts" means:~~

35 ~~(i) FOR A PERSON ENGAGED IN AN ELECTRIC, GAS, OR OIL~~

36 ~~PIPELINE BUSINESS IN THE STATE, total operating revenue; AND~~

1 ~~(H) FOR A PERSON PROVIDING A TELECOMMUNICATIONS SERVICE~~
2 ~~IN THE STATE, TOTAL REVENUE DERIVED FROM PROVIDING~~
3 ~~TELECOMMUNICATIONS SERVICES IN THE STATE.~~

4 ~~(2) "Gross receipts" includes:~~

5 ~~(i) gross or total earnings and total receipts;~~

6 ~~(ii) for a telephone company, the full amount of approved and~~
7 ~~applicable federal and State tariff charges for telephone lifeline service without the~~
8 ~~discount provided by Article 78, § 26A(e) of the Code; and~~

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

14 ~~(3) "Gross receipts" does not include:~~

15 ~~(i) any revenue that a public service company derives from an activity~~
16 ~~other than:~~

17 ~~1. an electric, gas, OR oil pipeline[, telegraph, or telephone]~~

18 ~~business; OR~~

19 ~~2. PROVIDING A TELECOMMUNICATIONS SERVICE;~~

20 ~~(ii) net uncollectible revenue; [or]~~

21 ~~(iii) gross charges from the sale by a public service company to another~~
22 ~~public service company subject to the tax imposed by this subtitle of:~~

23 ~~1. a service or product for resale; or~~

24 ~~2. natural gas or natural gas delivery service that is used by the~~

25 ~~other public service company in the generation of electricity; OR~~

26 ~~(IV) GROSS CHARGES FROM THE SALE OF PREPAID TELEPHONE~~
27 ~~CALLING CARDS OR TELECOMMUNICATIONS SERVICE OBTAINED USING A PREPAID~~
28 ~~TELEPHONE CALLING CARD.~~

29 ~~(4) NOTWITHSTANDING THE DEFINITION OF "TELECOMMUNICATIONS~~
30 ~~SERVICE" UNDER SUBSECTION (D) OF THIS SECTION, FOR CALENDAR YEARS 1998~~
31 ~~AND 1999 ONLY, "GROSS RECEIPTS" DOES NOT INCLUDE GROSS CHARGES DERIVED~~
32 ~~FROM:~~

33 ~~(I) A CUSTOM CALLING SERVICE PROVIDED IN CONNECTION WITH~~
34 ~~BASIC TELEPHONE SERVICE;~~

35 ~~(II) CELLULAR TELEPHONE, PERSONAL COMMUNICATIONS, OR~~
36 ~~OTHER MOBILE TELECOMMUNICATIONS SERVICE; OR~~

37 ~~(III) PAY PER VIEW TELEVISION SERVICE.~~

1 ~~(b-1) "Long distance telecommunications service" means telecommunications~~
2 ~~service for a telecommunication that does not originate and terminate in the same local~~
3 ~~calling area.~~

4 ~~(c) (1) "Public service company" means a person:~~

5 ~~(I) engaged in an electric, gas, OR oil pipeline[, telegraph, or~~
6 ~~telephone] business in the State; OR~~

7 ~~(II) PROVIDING A TELECOMMUNICATIONS SERVICE IN THE STATE.~~

8 ~~(2) "Public service company" does not include:~~

9 ~~(i) a county;~~

10 ~~(ii) a municipal corporation; or~~

11 ~~(iii) a nonprofit electric cooperative.~~

12 ~~(D) (1) "TELECOMMUNICATIONS SERVICE" MEANS:~~

13 ~~(I) THE TRANSMISSION OF ANY INTERACTIVE~~
14 ~~ELECTROMAGNETIC COMMUNICATIONS, INCLUDING VOICE, IMAGE, DATA, AND~~
15 ~~ANY OTHER INFORMATION, BY MEANS OF WIRE, CABLE, FIBER OPTICS, LASER,~~
16 ~~MICROWAVE, RADIO WAVE, SATELLITE, OR OTHER FACILITY OR ANY COMBINATION~~
17 ~~OF SUCH MEDIA; OR~~

18 ~~(II) THE PROVISION OF FACILITIES AND SERVICES FOR THE~~
19 ~~TRANSMISSION OF ANY INTERACTIVE ELECTROMAGNETIC COMMUNICATIONS.~~

20 ~~(2) "TELECOMMUNICATIONS SERVICE" INCLUDES:~~

21 ~~(I) BASIC TELEPHONE SERVICE, INCLUDING CUSTOM CALLING~~
22 ~~SERVICES AND ANY FACILITY OR SERVICE PROVIDED IN CONNECTION WITH BASIC~~
23 ~~TELEPHONE SERVICE;~~

24 ~~(II) TOLL TELEPHONE SERVICE AND TELETYPEWRITER OR~~
25 ~~COMPUTER EXCHANGE SERVICE;~~

26 ~~(III) BUSINESS SERVICE;~~

27 ~~(IV) DIRECTORY ASSISTANCE;~~

28 ~~(V) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,~~
29 ~~CABLE TELEVISION SERVICE, WIRELESS CABLE SERVICE, DIRECT BROADCAST~~
30 ~~SATELLITE SERVICE, SATELLITE MASTER ANTENNA TELEVISION SERVICE, OPEN~~
31 ~~VIDEO SERVICE, VIDEO DIALTONE SERVICE, AND ANY OTHER VIDEO~~
32 ~~PROGRAMMING SERVICE;~~

33 ~~(VI) CELLULAR TELEPHONE, PERSONAL COMMUNICATIONS, AND~~
34 ~~OTHER MOBILE TELECOMMUNICATIONS SERVICE;~~

35 ~~(VII) SPECIALIZED MOBILE RADIO AND PAGERS AND PAGING~~
36 ~~SERVICE; AND~~

5

1 ~~(VIII) ANY OTHER FORM OF MOBILE COMMUNICATION.~~

2 ~~(3) "TELECOMMUNICATIONS SERVICE" DOES NOT INCLUDE:~~

3 ~~(I) NONVOICE SERVICES IN WHICH COMPUTER PROCESSING~~
4 ~~APPLICATIONS ARE USED TO ACT ON THE INFORMATION TO BE TRANSMITTED;~~

5 ~~(II) CABLE SERVICE, AS DEFINED UNDER § 602 OF THE~~
6 ~~COMMUNICATIONS ACT OF 1934, AS AMENDED (47 U.S.C. 522), THAT IS PROVIDED BY A~~
7 ~~CABLE OPERATOR OVER A CABLE SYSTEM PURSUANT TO A FRANCHISE GRANTED~~
8 ~~BY A LOCAL GOVERNMENT; OR~~

9 ~~(III) INTERNET ACCESS SERVICE BY WHICH A CONNECTION IS~~
10 ~~PROVIDED BETWEEN A COMPUTER AND THE INTERNET.~~

11 ~~8-402.~~

12 ~~A franchise tax, measured by gross receipts, is imposed, for each calendar year, on~~
13 ~~each public service company doing business in the State.~~

14 ~~8-403.~~

15 ~~(A) [The] FOR A PERSON ENGAGED IN AN ELECTRIC, GAS, OR OIL PIPELINE~~
16 ~~BUSINESS IN THE STATE, THE public service company franchise tax rate is 2% of gross~~
17 ~~receipts derived from AN ELECTRIC, GAS, OR OIL PIPELINE business in the State.~~

18 ~~(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, FOR~~
19 ~~A PERSON PROVIDING A TELECOMMUNICATIONS SERVICE IN THE STATE, THE~~
20 ~~PUBLIC SERVICE COMPANY FRANCHISE TAX RATE IS 5% OF GROSS RECEIPTS~~
21 ~~DERIVED FROM PROVIDING TELECOMMUNICATIONS SERVICE IN THE STATE.~~

22 ~~(2) FOR CALENDAR YEARS BEFORE 2000, THE PUBLIC SERVICE~~
23 ~~COMPANY FRANCHISE TAX RATE FOR A PERSON PROVIDING~~
24 ~~TELECOMMUNICATIONS SERVICE IN THE STATE IS:~~

25 ~~(I) 3% FOR CALENDAR YEAR 1998; AND~~

26 ~~(II) 4% FOR CALENDAR YEAR 1999.~~

27 ~~8-409.~~

28 The public service company franchise tax with respect to gross receipts from [long
29 distance] telecommunications service shall be added to and disclosed as an element of
30 the [long distance telecommunications company's] PUBLIC SERVICE COMPANY'S
31 charge to the customer for the service.

32 10-306.

33 (C) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE
34 AMOUNT OF THE CREDIT ALLOWED UNDER § 10-708 OF THIS TITLE FOR PROPERTY
35 TAXES PAID ON OPERATING REAL PROPERTY BY A PUBLIC UTILITY THAT IS A
36 TELECOMMUNICATIONS COMPANY, DETERMINED WITHOUT REGARD TO THE
37 LIMITATION UNDER § 10-708(B) OF THIS TITLE.

6

1 10-307.

2 (e) The subtraction under subsection (a) of this section includes gross receipts,
3 less related expenses, that:

4 (1) are subject to the public service company franchise tax; and

5 (2) are not derived from [long distance] telecommunications service,~~as~~
6 ~~defined under [§ 8-401(b-1)] § 8-401 of this article.~~

7 10-708.

8 (A) A PUBLIC UTILITY THAT IS A TELECOMMUNICATIONS COMPANY MAY
9 CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN AMOUNT EQUAL TO 60%
10 OF THE TOTAL STATE, COUNTY, AND MUNICIPAL CORPORATION PROPERTY TAXES
11 PAID BY THE PUBLIC UTILITY DURING THE TAXABLE YEAR ON ITS OPERATING
12 REAL PROPERTY IN THE STATE THAT IS USED IN ITS TELECOMMUNICATIONS
13 BUSINESS ~~OTHER THAN OPERATING LAND.~~

14 (B) (1) THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT EXCEED
15 THE STATE INCOME TAX IMPOSED FOR THE TAXABLE YEAR, DETERMINED AFTER
16 APPLICATION OF ANY OTHER CREDITS ALLOWABLE UNDER THIS SUBTITLE.

17 (2) THE UNUSED AMOUNT OF THE CREDIT FOR ANY TAXABLE YEAR
18 MAY NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.

19 ~~11-101.~~

20 ~~(C-1) "PREPAID TELEPHONE CALLING CARD" MEANS A RIGHT TO MAKE~~
21 ~~TELEPHONE CALLS, PREPAID IN INCREMENTAL AMOUNTS, WHETHER OR NOT~~
22 ~~REPRESENTED BY CORPOREAL PERSONAL PROPERTY.~~

23 ~~(i) (1) "Tangible personal property" means:~~

24 ~~(i) corporeal personal property of any nature; [or]~~

25 ~~(ii) a right to occupy a room or lodgings as a transient guest; OR~~

26 ~~(iii) A PREPAID TELEPHONE CALLING CARD.~~

27 ~~(k) "Taxable service" means:~~

28 ~~(9) credit reporting; [or]~~

29 ~~(10) a security service, including:~~

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

31 ~~(ii) a security systems service[.]; OR~~

32 ~~(11) INTERNET ACCESS SERVICE BY WHICH A CONNECTION IS PROVIDED~~
33 ~~BETWEEN A COMPUTER AND THE INTERNET.~~

7

1 ~~Article – Tax – Property~~

2 ~~1-101.~~

3 (u) (1) "Operating property" means any property used to operate a railroad or
4 public utility.

5 (2) "Operating property" includes operating real property and operating
6 personal property.

7 (3) "Operating real property" includes any real property used to operate a
8 railroad or public utility.

9 (4) "Operating land" means any land used to operate a railroad or public
10 utility.

11 (5) (I) "Operating personal property" includes any property, other than
12 real property, used to operate a railroad or public utility.

13 (II) FOR A PUBLIC UTILITY THAT IS A TELECOMMUNICATIONS
14 PROVIDER, "OPERATING PERSONAL PROPERTY" INCLUDES THE CABLES, LINES,
15 POLES, AND TOWERS USED TO PROVIDE TELECOMMUNICATIONS SERVICES.

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

18 ~~Article – Tax – General~~

19 ~~11-101.~~

20 (k) "Taxable service" means:

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

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

26 (3) cleaning of a commercial or industrial building;

27 {(4) cellular telephone or other mobile telecommunications service; }

28 {(5)} (4) "900", "976", "915", and other "900" type [telecommunications]
29 INFORMATION OR ENTERTAINMENT service;

30 {(6) custom calling service provided in connection with basic telephone
31 service; }

32 {(7)} (5) a telephone answering service;

33 {(8)} (6) pay per view television service THAT IS PROVIDED BY A CABLE
34 OPERATOR OVER A CABLE SYSTEM PURSUANT TO A FRANCHISE GRANTED BY A
35 LOCAL GOVERNMENT;

36 {(9)} (7) credit reporting;

8

1 ~~{(10)}~~ (8) a security service, including:

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

3 (ii) a security systems service; or

4 ~~{(11)}~~ (9) Internet access service by which a connection is provided between
5 a computer and the Internet.

6 ~~SECTION 3. AND BE IT FURTHER ENACTED, That:~~

7 ~~(1) The Public Service Commission shall require a reduction in local
8 telephone rates to be effective January 1, 1998, to fully reflect the elimination of the 2%
9 public service company franchise tax that was formerly included in the rates for the
10 telephone company; and~~

11 ~~(2) Notwithstanding the provisions of § 8-409 of the Tax—General Article
12 as enacted under Section 1 of this Act, a local telephone service provider may not add the
13 public service company franchise tax to its charge to the customer for local telephone
14 service until the reduction in local telephone rates required under this section is effective.~~

15 ~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

16 ~~(1) The Public Service Commission shall determine and require a reduction
17 in telephone rates to be effective January 1, 1998, to reflect the treatment of the 2%
18 public service company franchise tax pursuant to § 8-409 of the Tax - General Article as
19 enacted under Section 1 of this Act, the cost of which was formerly included in the
20 telephone rates;~~

21 ~~(2) The Public Service Commission shall determine and require a reduction
22 in telephone rates to be effective January 1, 1998 to reflect the impact on total State taxes
23 resulting from §§ 10-306(c), 10-307, and 10-708 of the Tax - General Article as enacted
24 under Section 1 of this Act; and~~

25 ~~(3) Notwithstanding the provisions of § 8-409 of the Tax - General Article
26 as enacted under Section 1 of this Act, a local telephone service provider may not add the
27 public service company franchise tax to its charge to the customer for local telephone
28 service until the reduction in local telephone rates required under this section is effective.~~

29 ~~SECTION 4. 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act
30 shall take effect January 1, 1998. The changes to the public service company franchise tax
31 and the income tax under Section 1 of this Act shall be applicable to all taxable years
32 beginning after December 31, 1997; provided, however, that the income tax credit allowed
33 under § 10-708 of the Tax - General Article shall be allowed only for property tax paid
34 for a property tax year beginning on or after July 1, 1998. The changes to the Property Tax
35 Article under Section 1 of this Act shall be applicable to all property tax years beginning
36 on or after July 1, 1998.~~

37 ~~SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
38 take effect January 1, 2000.~~

39 ~~SECTION 6. 4. AND BE IT FURTHER ENACTED, That Section 3 2 of this Act
40 shall take effect July 1, 1997.~~

