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CF HB 512

By: Senators Hoffman, Amoss, and Hogan

Introduced and read first time: January 31, 1997

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 26, 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; excluding certain gross charges from the~~
 8 ~~definition of "gross receipts" subject to the public service company franchise tax;~~
 9 providing that the public service company franchise tax with respect to gross
 10 receipts from telecommunications service shall be added to and disclosed as an
 11 element of the charge to the customer for the service; limiting a certain subtraction
 12 modification under the income tax for gross receipts subject to the public service
 13 company franchise tax to gross receipts not derived from telecommunications
 14 service; providing a credit against the ~~corporation income taxes~~ State income tax for
 15 certain property taxes paid by a public utility that is a telecommunications company;
 16 requiring an addition modification under the income tax in the amount of a certain
 17 credit; imposing the sales and use tax on the sale of prepaid telephone calling cards;
 18 ~~imposing the sales and use tax on certain Internet access service~~; altering the
 19 definition of "operating personal property" for property tax purposes for a public
 20 utility that is a telecommunications provider; ~~repealing the sales and use tax on~~
 21 ~~certain telecommunications services; altering the application of the sales and use tax~~
 22 ~~to certain services~~; requiring the Public Service Commission to require determine
 23 and require a certain reduction in local telephone rates ~~to reflect the elimination of~~
 24 ~~a certain tax formerly included in the rates~~; prohibiting a local telephone service
 25 provider from adding a certain tax to its charge to the customer until a certain
 26 reduction in rates is effective; requiring a local telephone service provider to
 27 provide certain information to certain customers; providing for the effective dates
 28 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 Annotated Code of Maryland

6 (1988 Volume and 1996 Supplement)

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

8 ~~Article - Tax - General~~

9 ~~Section 8-402~~

10 ~~Annotated Code of Maryland~~

11 ~~(1988 Volume and 1996 Supplement)~~

12 BY adding to

13 Article - Tax - General

14 Section 10-306(c), 10-708, and 11-101(c-1) ~~and (k)(11)~~

15 Annotated Code of Maryland

16 (1988 Volume and 1996 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article - Tax - Property

19 Section 1-101(u)

20 Annotated Code of Maryland

21 (1994 Replacement Volume and 1996 Supplement)

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

23 ~~Article - Tax - General~~

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

25 ~~Annotated Code of Maryland~~

26 ~~(1988 Volume and 1996 Supplement)~~

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

28 Preamble

29 WHEREAS, The telecommunications industry in Maryland and around the country

30 is undergoing rapid change as telecommunications companies attempt to position

31 themselves for increasing competition; and

32 WHEREAS, The General Assembly believes that competition is good for the State

33 and that it will lead to more diverse, more efficient, and lower priced services for

34 consumers; and

35 WHEREAS, It is recognized that disparities in Maryland's telecommunications tax

36 policy may restrict competition; however, inhibiting factors and important uncertainties

37 make comprehensive tax reform difficult to accomplish at this time; and

4

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

3 1. a service or product for resale; or

4 2. natural gas or natural gas delivery service that is used by the
5 other public service company in the generation of electricity; OR

6 (IV) GROSS CHARGES FROM THE SALE BY A PUBLIC SERVICE
7 COMPANY OF:

8 1. PREPAID TELEPHONE CALLING CARDS OR
9 TELECOMMUNICATIONS SERVICE OBTAINED USING A PREPAID TELEPHONE
10 CALLING CARD; OR

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

15 ~~(I) A CUSTOM CALLING SERVICE PROVIDED IN CONNECTION WITH~~
16 ~~BASIC TELEPHONE SERVICE;~~

17 ~~(II) CELLULAR TELEPHONE, PERSONAL COMMUNICATIONS, OR~~
18 ~~OTHER MOBILE TELECOMMUNICATIONS SERVICE; OR~~

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

20 2. INTERNET ACCESS SERVICE BY WHICH A CONNECTION IS
21 PROVIDED BETWEEN A COMPUTER AND THE INTERNET.

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

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

26 ~~(I) engaged in an electric, gas, OR oil pipeline, telegraph, or~~
27 ~~telephone business in the State; OR~~

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

29 (2) "Public service company" does not include:

30 (i) a county;

31 (ii) a municipal corporation; or

32 (iii) a nonprofit electric cooperative.

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

34 ~~(I) THE TRANSMISSION OF ANY INTERACTIVE~~
35 ~~ELECTROMAGNETIC COMMUNICATIONS, INCLUDING VOICE, IMAGE, DATA, AND~~
36 ~~ANY OTHER INFORMATION, BY MEANS OF WIRE, CABLE, FIBER OPTICS, LASER,~~

5

1 MICROWAVE, RADIO WAVE, SATELLITE, OR OTHER FACILITY OR ANY COMBINATION
2 OF SUCH MEDIA; OR

3 (II) THE PROVISION OF FACILITIES AND SERVICES FOR THE
4 TRANSMISSION OF ANY INTERACTIVE ELECTROMAGNETIC COMMUNICATIONS.

5 (2) "TELECOMMUNICATIONS SERVICE" INCLUDES:

6 (I) BASIC TELEPHONE SERVICE, INCLUDING CUSTOM CALLING
7 SERVICES AND ANY FACILITY OR SERVICE PROVIDED IN CONNECTION WITH BASIC
8 TELEPHONE SERVICE;

9 (II) TOLL TELEPHONE SERVICE AND TELETYPEWRITER OR
10 COMPUTER EXCHANGE SERVICE;

11 (III) BUSINESS SERVICE;

12 (IV) DIRECTORY ASSISTANCE;

13 (V) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
14 CABLE TELEVISION SERVICE, WIRELESS CABLE SERVICE, DIRECT BROADCAST
15 SATELLITE SERVICE, SATELLITE MASTER ANTENNA TELEVISION SERVICE, OPEN
16 VIDEO SERVICE, VIDEO DIALTONE SERVICE, AND ANY OTHER VIDEO
17 PROGRAMMING SERVICE;

18 (VI) CELLULAR TELEPHONE, PERSONAL COMMUNICATIONS, AND
19 OTHER MOBILE TELECOMMUNICATIONS SERVICE;

20 (VII) SPECIALIZED MOBILE RADIO AND PAGERS AND PAGING
21 SERVICE; AND

22 (VIII) ANY OTHER FORM OF MOBILE COMMUNICATION.

23 (3) "TELECOMMUNICATIONS SERVICE" DOES NOT INCLUDE:

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

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

30 (III) INTERNET ACCESS SERVICE BY WHICH A CONNECTION IS
31 PROVIDED BETWEEN A COMPUTER AND THE INTERNET.

32 8-402.

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

6

1 ~~8-403.~~

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

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

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

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

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

14 8-409.

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

19 10-306.

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

25 10-307.

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

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

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

31 10-708.

32 (A) A PUBLIC UTILITY THAT IS A TELECOMMUNICATIONS COMPANY MAY
 33 CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN AMOUNT EQUAL TO 60%
 34 OF THE TOTAL STATE, COUNTY, AND MUNICIPAL CORPORATION PROPERTY TAXES
 35 PAID BY THE PUBLIC UTILITY DURING THE TAXABLE YEAR ON ITS OPERATING
 36 REAL PROPERTY IN THE STATE THAT IS USED IN ITS TELECOMMUNICATIONS
 37 BUSINESS OTHER THAN OPERATING LAND.

7

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

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

6 11-101.

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

10 (i) (1) "Tangible personal property" means:

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

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

13 (III) A PREPAID TELEPHONE CALLING CARD.

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

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

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

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

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

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

21 **Article - Tax - Property**

22 1-101.

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

25 (2) "Operating property" includes operating real property and operating
 26 personal property.

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

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

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

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

8

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

3 ~~Article—Tax—General~~

4 ~~11-101.~~

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

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

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

11 ~~(3) cleaning of a commercial or industrial building;~~

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

13 ~~[(5)] (4) "900", "976", "915", and other "900" type [telecommunications]~~
 14 ~~INFORMATION OR ENTERTAINMENT service;~~

15 ~~[(6) custom calling service provided in connection with basic telephone~~
 16 ~~service;]~~

17 ~~[(7)] (5) a telephone answering service;~~

18 ~~[(8)] (6) pay per view television service THAT IS PROVIDED BY A CABLE~~
 19 ~~OPERATOR OVER A CABLE SYSTEM PURSUANT TO A FRANCHISE GRANTED BY A~~
 20 ~~LOCAL GOVERNMENT;~~

21 ~~[(9)] (7) credit reporting;~~

22 ~~[(10)] (8) a security service, including:~~

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

24 ~~(ii) a security systems service; or~~

25 ~~[(11)] (9) Internet access service by which a connection is provided between~~
 26 ~~a computer and the Internet.~~

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

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

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

36 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

6 (b) Notwithstanding the provisions of § 8-409 of the Tax - General Article as
7 enacted under Section 1 of this Act, a local telephone service provider may not add the
8 public service company franchise tax to its charge to the customer for local telephone
9 service until the reduction in local telephone rates required under subsection (a) of this
10 section is effective; and

11 (c) Beginning with the first monthly billing showing the public service company
12 franchise tax as a line item on the customer bill and for the next three billings thereafter,
13 a local telephone service provider shall provide the customer with information in the
14 provider's monthly billing that the public service company franchise tax line item is not a
15 tax increase but merely a disclosure of taxes presently and previously paid by the
16 customer.

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

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

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