

CHAPTER 11

SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX

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3-11-1 DEFINITIONS: As used in this Chapter the following terms shall the following meanings:

Amount paid means the amount charged to the taxpayer's service address in such municipality regardless of where such amount is billed or paid.

Department means the Illinois Department of Revenue.

Gross charge means the amount paid for the act or privilege of originating or receiving telecommunications in such municipality and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel termination point within this municipality, and charges for that portion of the interstate inter-office channel provided within this municipality. Charges for that portion of the inter-office channel connecting 2 or more channel termination points, one or more of which is located within the jurisdictional boundary of this municipality, shall be determined by the retailer by multiplying an amount equal to the total charge for the inter-office channel by a fraction, the numerator of which is the number of channel termination points that are located within the jurisdictional boundary of the municipality and the denominator of which is the total number of channel termination points connected by the inter-office channel. However, "gross charge" shall not

include any of the following: (1) any amounts added to a purchaser's bill because of a charge made pursuant to: (i) the tax imposed by this Act, (ii) the tax imposed by the Telecommunications Excise Tax Act, (iii) the tax imposed by Section 4251 of the Internal Revenue Code, (iv) 911 surcharges, or (v) charges added to customers' bills pursuant to the provisions of Section 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in those provisions of the Public Utilities Act; (2) charges for a sent collect telecommunication received outside of such municipality; (3) charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement; (4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges; (5) charges to business enterprises certified as exempt under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Economic Opportunity; (6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Act has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service; (7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made); (8) charges paid by inserting coins in coin-operated telecommunication devices; (9) amounts paid by telecommunications retailers under the Telecommunications Infrastructure Maintenance Fee Act; (10) Charges for nontaxable services or telecommunications if (i) those charges are aggregated with other charges for telecommunications that are taxable, (ii) those charges are not separately stated on the customer bill or invoice, and (iii) the retailer can reasonably identify the nontaxable charges on the retailer's books and records kept in the

regular course of business. If the nontaxable charges cannot reasonably be identified, the gross charge from the sale of both taxable and nontaxable services or telecommunications billed on a combined basis shall be attributed to the taxable services or telecommunications. The burden of proving nontaxable charges shall be on the retailer of the telecommunications. (Amd. Ord. 10-3138-15, eff. 4/26/10)

Interstate telecommunications means all telecommunications that either originate or terminate outside this State.

Intrastate telecommunications means all telecommunications that originate and terminate within this State.

Person means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, county, or other political subdivision of this State.

Purchase at retail means the acquisition, consumption or use of telecommunications through a sale at retail.

Retailer means and includes every person engaged in the business of making sales at retail as defined in this Section. The Department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion.

Retailer maintaining a place of business in this State means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the

retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

Sale at retail means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

Service address means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, and maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

Taxpayer means a person who individually or through his or her agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in a municipality and who incurs a tax liability as authorized by this Act.

Telecommunications in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll, and wide area telephone service, private line services, channel services, telegraph services, teletypewriter, computer exchange services, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. As used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission.

"Telecommunications" shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale. Prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Act.

3-11-2 LEVY OF TAX: The Village shall levy a tax at a rate as prescribed in the Comprehensive Fee Schedule set forth in Chapter 15 of Title 1 of this Code against the gross charges collected by all persons engaged in:(Amd Ord. 08-3073-56, eff. 12/8/08)

- A. The act or privilege of originating in such municipality or receiving in such municipality intrastate telecommunications by a person. However, such tax is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State. To prevent actual multi-municipal taxation of the act or privilege that is subject to taxation under this Chapter, any taxpayer, upon proof that the taxpayer has paid a tax in another municipality on that event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Section to the extent of the amount of the tax properly due and paid in the municipality that was not previously allowed as a credit against any other municipal tax. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.
- B. The act or privilege of originating in such municipality or receiving in such municipality interstate telecommunications by a person. To prevent actual multi-state or multi-municipal taxation of the act or privilege that is subject to taxation under this Chapter, any taxpayer, upon proof that the taxpayer has paid a tax in another state or municipality in this State on such event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Chapter to the extent of the amount of such tax properly due and paid in such other state or such tax property due and paid in a municipality in this State which was not previously allowed as a credit against any other state or local tax in this State. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State. (Amd. Ord. 10-3138-15, eff. 4/26/10)

3-11-3 COLLECTION: The tax authorized by this Chapter shall be collected from the taxpayer by a retailer maintaining a place of business in this State and shall be remitted by such retailer to the Department. Any tax required to be collected pursuant to or as authorized by this Act and any such tax collected by such retailer and required to be remitted to the Department shall constitute a debt owed by the retailer to the State. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use, in the manner prescribed by the Department. The tax authorized by this Act shall constitute a debt of the taxpayer to the retailer until paid, and, if unpaid, is recoverable at law in the same manner as the original charge for such sale at retail. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the Department in the manner provided by the Department.

3-11-4 EXISTING FRANCHISES AND LICENSES: The Village shall be deemed to have waived its right to receive all fees, charges and other compensation that might accrue to the Village after the effective date of this Chapter, under any franchise agreement, license, or similar agreement, executed on or before January 1, 1998 with telecommunications retailers. This waiver shall be effective only during the time that the tax authorized under this Chapter is subject to being lawfully imposed on the telecommunications retailer and the tax is collected by the Village or the Department and paid over to the Village.

3-11-5 REBATES AND EXCEPTIONS:

- A. Any unit of local government or school district whose territory includes part of the Village, may file a petition with the Village Clerk requesting that the amount of the tax authorized by this Chapter and paid by the other unit of local government or school district to the Village be rebated to such unit of local government or school district, in whole or in part. The Village Board may provide by ordinance, in its sole discretion, whether to grant such petition and, if so, the duration of the applicability of such rebate provisions.
- B. Any persons 65 years of age or older may file a petition with the Village Clerk requesting that the amount of the tax authorized by this Chapter and paid by such persons be rebated to such persons, in whole or in part. The Village Board may provide by ordinance, in its sole discretion, whether to grant such petition and, if so, the duration of the applicability of such rebate provisions.

3-11-6 CONFORMITY, CONFLICT: This Chapter is intended to conform to the provisions of the Simplified Municipal Telecommunications Act, P.A. 92-526, or any amendatory or successor law. To the extent this Chapter conflicts with any other previously adopted chapters of the Village, or parts thereof, this Chapter shall prevail and supercede such other chapters, or parts thereof, to the extent required to cure such conflict.

3-11-7 SEVERABILITY: In the event any provision or application of this Chapter is found unenforceable by a court of competent jurisdiction, such finding shall not affect any other application or the remaining provisions of this Chapter to the maximum extent permitted by law.(Ord. No. 03-1833-10, eff. 4/14/03)