

CHAPTER 206

H.B. No. 1949

An Act relating to the application of sales and use taxes to telecommunications services and to gross receipts taxes on telephone and telegraph companies.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. LEGISLATIVE FINDINGS. The 69th Legislature of the State of Texas hereby finds that significant technological, organizational, and governmental changes have occurred in the telecommunications industry since the enactment of the sales tax in 1961 and the gross receipts tax on telephone companies in 1907; that existing Texas tax laws do not operate in recognition of these changes, resulting in inequity and confusion; and a restructuring of these laws is necessary in order to achieve a system of taxation that is both efficient and equitable. Therefore, it is the intent and purpose of the 69th Legislature, by means of this Act, to clarify the application of these taxes so that similarly situated taxpayers are treated the same and pay their fair share of tax.

SECTION 2. Section 151.008(b), Tax Code, is amended to read as follows:

(b) "Seller" and "retailer" include:

- (1) a person in the business of making sales at auction of tangible personal property owned by the person or by another;
- (2) a person who makes more than two sales of taxable items during a 12-month period, including sales made in the capacity of an assignee for the benefit of creditors or receiver or trustee in bankruptcy; ~~and~~
- (3) a person regarded by the comptroller as a seller or retailer under Section 151.024 of this code; *and*
- (4) *a hotel, motel, or owner or lessor of an office or residential building or development that contracts and pays for telecommunications services for resale to guests or tenants.*

SECTION 3. Section 151.0101(a), Tax Code, is amended to read as follows:

(a) "Taxable services" means:

- (1) amusement services;
- (2) cable television services;
- (3) personal services;
- (4) motor vehicle parking and storage services; ~~and~~
- (5) the repair, remodeling, maintenance, and restoration of tangible personal property, except:
 - (A) aircraft;
 - (B) a ship, boat, or other vessel, other than a sports fishing boat or any other vessel used for pleasure; and
 - (C) the repair, maintenance, and restoration of a motor vehicle; *and*
- (6) *telecommunications services.*

SECTION 4. Chapter 151, Tax Code, is amended by adding Sections 151.0103 and 151.0104 to read as follows:

Sec. 151.0103. TELECOMMUNICATIONS SERVICES. For the purposes of this title only, "telecommunications services" means the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. The storage of data or information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content are not included in "telecommunications services."

Sec. 151.0104. TELEPHONE COMPANY. For the purposes of this chapter, "telephone company" has the meaning given to that term by Section 182.061(1) of this code.

SECTION 5. Section 151.025, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) A seller of telecommunications services must separate charges for those services from charges for items not subject to the taxes imposed by this chapter on all bills or invoices.

SECTION 6. Section 151.054(b), Tax Code, is amended to read as follows:

(b) A sale is exempt if the seller receives in good faith from a purchaser, who is in the business of selling, leasing, or renting taxable items, a resale certificate stating that the tangible personal property or service is acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

SECTION 7. Section 151.302, Tax Code, is amended to read as follows:

Sec. 151.302. SALES FOR RESALE. The sale for resale of a taxable item is exempted from the taxes imposed by this chapter. Tangible personal property used to perform a taxable service is not considered resold unless the care, custody, and control of the tangible personal property is transferred to the purchaser of the service.

SECTION 8. Section 151.305(b), Tax Code, is amended to read as follows:

(b) Telephone service paid for by the insertion of coins into a coin-operated telephone is exempted from the taxes imposed by this chapter if provided by a telephone company.

SECTION 9. Section 151.323, Tax Code, is amended to read as follows:

Sec. 151.323. CERTAIN TELECOMMUNICATIONS SERVICES [TELEPHONE AND TELEGRAPH]. (a) There are exempted from the taxes imposed by this chapter the receipts from the sale, [production, distribution, lease or rental of and the storage,] use, or other consumption in this state of:

(1) interstate long-distance telecommunications services;

(2) basic local exchange telephone service;

(3) access to a local exchange telephone company's network by a provider of telecommunications services;

(4) broadcasts, other than cable television service, by commercial radio or television stations licensed or regulated by the Federal Communications Commission; and

(5) telecommunications services provided to its members by a corporation that is regulated by the public utility commission as a certificated provider of local exchange telephone service and meets the definition of "corporation" in the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) as it existed on January 1, 1985.

(b) For the purpose of this section, "basic local exchange telephone service" has the meaning given to that term by Section 182.061(3) of this code [telephone and telegraph service].

SECTION 10. Section 182.061, Tax Code, is amended to read as follows:

Sec. 182.061. DEFINITIONS. In this subchapter:

(1) "Telephone company" means a person who owns or operates a telephone line or a telephone network in this state, [and] charges for its use, and is regulated by the public utility commission as a certificated provider of local exchange telephone service.

(2) "Business" means providing basic local exchange telephone service, or telephone service paid for by the insertion of coins into a coin-operated telephone, but does not include:

(A) providing access to a local telephone company's network to a provider of telecommunications services subject to the tax imposed under Chapter 151 of this code;

(B) leasing or selling telephones or telephone equipment; or

(C) telecommunications services taxable under Chapter 151 of this code [telephone service or leasing a telephone, telephone equipment, or telephone line].

(3) "Basic local exchange telephone service" means the provision by a telephone company of an access line and dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network.

SECTION 11. Subdivision (1), Subsection B, Section 6, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), is amended by adding Paragraph (f) to read as follows:

(f) For the purpose of determining the proper local sales and use tax, the sale of telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other transmission originates. If the point of origin cannot be determined, the sale is consummated at the address to which the call is billed.

SECTION 12. Subdivision (c), Subsection (B), Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Paragraph (7) to read as follows:

(7) For the purpose of determining the proper local sales and use tax, the sale of telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other transmission originates. If the point of origin cannot be determined, the sale is consummated at the address to which the call is billed.

SECTION 13. Subdivision (2), Subsection (f), Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Paragraph (G) to read as follows:

(G) For the purpose of determining the proper local sales and use tax, the sale of telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other transmission originates. If the point of origin cannot be determined, the sale is consummated at the address to which the call is billed.

SECTION 14. Subchapter A, Chapter 182, Tax Code, is repealed.

SECTION 15. The Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes) is amended by adding Section 4B to read as follows:

Sec. 4B. (a) There are exempted from the taxes imposed under the authority of this Act the receipts from the sale within the city of telecommunications services except as provided by Subsection (b) of this section.

(b) The governing body of the city that has adopted the tax authorized by this Act may adopt an ordinance by a majority vote of the governing body, in the manner otherwise required for the adoption by the city of an ordinance, repealing the application of the exemption provided by this section for telecommunications services sold within the city. A city that has voted to repeal the application of the exemption may in the same manner exempt from the tax the receipts from the sale within the city of telecommunications services. A vote of the governing body repealing the application of the exemption or exempting the receipts from the sale of telecommunications services must be entered in the minutes of the city. If an ordinance repealing the application of the exemption or exempting the receipts from the sale of telecommunications services is adopted, the city secretary shall forward to the comptroller by United States Registered or Certified Mail a copy of the ordinance. On receipt of the notification by the comptroller, one whole calendar quarter shall elapse before the repeal of the application of the exemption or the exemption becomes effective. The imposition of the tax or the exemption then takes effect on the first day of the calendar quarter next succeeding the elapsed quarter.

(c) Notwithstanding Subsection (b) of this section, no ordinance repealing the application of the exemption provided by Subsection (a) of this section may take effect or be effective before October 1, 1987.

SECTION 16. Subsection (B), Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Subdivision (b-1) to read as follows:

(b-1)(1) There are exempted from the taxes imposed under the authority of this Act the receipts from the sale within the authority area of telecommunications services except as provided by Paragraph (2) of this subdivision.

(2) The board of an authority that has adopted the tax authorized by this Act may adopt an order by a majority vote of the board, in the manner otherwise required for the adoption by the board of an order, repealing the application of the exemption provided by this section for telecommunications services sold within the authority area. An authority that has repealed the application of the exemption may in the same manner exempt from the tax the receipts from the sale within the authority area of telecommunications services. A vote of the board repealing the application of the exemption or exempting the receipts from the sale of telecommunications services must be entered in the minutes of the authority. If an ordinance repealing the application of the exemption or exempting the receipts from the sale of telecommunications services is adopted, the

board chairman or secretary to the board shall forward to the comptroller by United States registered mail or certified mail a copy of the order. On receipt of the notification by the comptroller, one whole calendar quarter shall elapse before the repeal of the application of the exemption or the exemption becomes effective. The imposition of the tax or the exemption then takes effect on the first day of the calendar quarter next succeeding the elapsed quarter.

(3) Notwithstanding Paragraph (2) of this subdivision, no order repealing the application of the exemption provided by Paragraph (1) of this subdivision may take effect or be effective before October 1, 1987.

SECTION 17. Subsection (f), Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Subdivision (1-A) to read as follows:

(1-A)(A) *There are exempted from the taxes imposed under the authority of this Act the receipts from the sale within the authority area of telecommunications services except as provided by Paragraph (B) of this subdivision.*

(B) *The board of an authority that has adopted the tax authorized by this Act may adopt an order by a majority vote of the board in the manner otherwise required for the adoption by the board of an order repealing the application of the exemption provided by this section for telecommunications services sold within the authority area. An authority that has repealed the application of the exemption may in the same manner exempt from the tax the receipts from the sale within the authority area of telecommunications services. A vote of the board repealing the application of the exemption or exempting the receipts from the sale of telecommunications services must be entered in the minutes of the authority. If an ordinance repealing the application of the exemption or exempting the receipts from the sale of telecommunications services is adopted, the board chairman or secretary to the board shall forward to the comptroller by United States registered mail or certified mail a copy of the order. On receipt of the notification by the comptroller, one whole calendar quarter shall elapse before the repeal of the application of the exemption or the exemption becomes effective. The imposition of the tax or the exemption then takes effect on the first day of the calendar quarter next succeeding the elapsed quarter.*

(C) *Notwithstanding Paragraph (B) of this subdivision, no order repealing the application of the exemption provided by Paragraph (A) of this subdivision may take effect or be effective before October 1, 1987.*

SECTION 18. (a) This Act takes effect October 1, 1985, and applies to telecommunications services as defined by Chapter 151, Tax Code, provided on or after that date.

(b) The repeal of Subchapter A, Chapter 182, Tax Code, and the amendments to Subchapter D, Chapter 182, Tax Code, by this Act do not affect the taxes imposed under those subchapters before the effective date of this Act. The provisions of those subchapters in effect immediately before the effective date of this Act that relate to the enforcement and collection of the taxes accruing before the effective date of this Act are continued in effect for the sole purpose of paying, collecting, and enforcing those taxes, including the requirement of tax reports and payments due on or before October 31, 1985, under Chapter 182, Tax Code.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 18, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 1949 on May 9, 1985, by a non-record vote; passed by the Senate, with amendments, on May 2, 1985, by a viva-voce vote.

Approved: May 24, 1985

Effective: October 1, 1985