

SECOND REGULAR SESSION

# SENATE BILL NO. 1121

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR ONDER.

Read 1st time March 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To amend chapter 92, RSMo, by adding thereto five new sections relating to prepaid wireless telecommunications services taxes, with an effective date.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 92, RSMo, is amended by adding thereto five new  
2 sections, to be known as sections 92.096, 92.098, 92.099, 92.100, and 92.102, to  
3 read as follows:

**92.096. 1. Sections 92.096 to 92.102 shall be known and may be  
2 cited as the "Prepaid Wireless Telecommunications Business License  
3 Tax Act".**

**4 2. As used in sections 92.096 to 92.102, unless the context clearly  
5 requires otherwise, the following terms mean:**

**6 (1) "Business license tax", any tax, including any fee, charge, or  
7 assessment in the nature of a tax, assessed by a municipality on a  
8 telecommunications company for the privilege of doing business within  
9 the borders of such municipality, and specifically includes any tax  
10 assessed on a telecommunications company by a municipality under  
11 sections 66.300 and 80.090; under section 92.045, 92.073, 94.110, 94.270,  
12 or 94.360; or under authority granted in its charter, as well as an  
13 occupation license tax, gross receipts tax, franchise tax, or similar tax,  
14 but shall not include:**

**15 (a) Any state or local sales or use tax imposed under sections  
16 32.085 and 32.087 or under sections 144.010 to 144.525;**

**17 (b) Any municipal right-of-way usage fee imposed under the  
18 authority of a municipality's police powers under section 253(c) of the  
19 federal Telecommunications Act of 1996 (47 U.S.C. Section 253(c)), as  
20 amended, or under sections 67.1830 to 67.1846;**

21           (c) Any tax or fee levied for emergency services under section  
22 190.292, 190.305, 190.325, 190.335, or 190.430, or any tax authorized by  
23 the general assembly on or after the effective date of this section for  
24 emergency services; or

25           (d) Any flat tax duly imposed;

26           (2) "Gross receipts", all receipts from the retail sale of prepaid  
27 wireless telecommunications service;

28           (3) "Municipal", of or relating to a municipality;

29           (4) "Municipality", any city, county, town, or village in Missouri  
30 entitled by authority of section 66.300, 80.090, 92.045, 92.073, 94.110,  
31 94.270, or 94.360, or under authority granted in its charter to assess a  
32 business license tax on telecommunications companies;

33           (5) "Prepaid wireless telecommunications service", a wireless  
34 telecommunications service that is paid for in advance and is sold in  
35 predetermined units or dollars of which the number declines with use  
36 in a known amount or expiration of time;

37           (6) "Retail sale", the sale of wireless telecommunications service  
38 by a telecommunications company for use or consumption and not for  
39 resale;

40           (7) "Telecommunications company", any company doing business  
41 in this state that provides wireless telecommunications service,  
42 whether a facilities-based carrier or reseller. For purposes only of  
43 sections 92.096 to 92.102, the term "telecommunications company" shall  
44 include a third-party retailer of a provider's wireless  
45 telecommunications service. To the extent a company that would  
46 otherwise qualify as a telecommunications company makes a sale of  
47 prepaid wireless telecommunications services that is for resale, the  
48 company is not considered a telecommunications company for purposes  
49 of sections 92.096 to 92.102 and is not responsible for the business  
50 license tax on those sales for resale;

51           (8) "Telecommunications service", the same meaning as such term  
52 is defined under subdivision (14) of subsection 1 of section 144.010;

53           (9) "Wireless telecommunications service", telecommunications  
54 service that is commercial mobile radio service, as such term is defined  
55 in 47 CFR 20.3, as amended.

          92.098. Notwithstanding any provisions of this chapter or  
2 chapter 66, 80, or 94, or the provisions of any municipal charter, after

3 the effective date of this section, no municipality shall impose any  
4 business license tax on the gross receipts of a telecommunications  
5 company derived from the business of providing prepaid wireless  
6 telecommunications service, except as specified under sections 92.096  
7 to 92.102. Sections 92.096 to 92.102 shall not apply to business license  
8 taxes on gross receipts other than gross receipts derived from prepaid  
9 wireless telecommunications service.

92.099. 1. The payment of any business license tax described  
2 under sections 92.096 to 92.102 may, at the option of the  
3 telecommunications company remitting the business license tax, be  
4 submitted to the department of revenue in lieu of a direct payment to  
5 a municipality. The department of revenue shall distribute the  
6 revenues it collects from such business license tax to the  
7 municipality. For the cost of collection, the department of revenue may  
8 retain up to one percent of the revenues it collects from such business  
9 license tax.

10 2. For the cost of collection, a telecommunications company may  
11 retain one percent of the revenues it collects from the business license  
12 tax. A telecommunications company shall not be required to obtain any  
13 license or pay any fees solely due to its collection of the business  
14 license tax.

92.100. 1. Nothing in this section shall have the effect of  
2 repealing any existing ordinance imposing a business license tax on a  
3 telecommunications company; provided that, a city with an ordinance  
4 in effect prior to the effective date of this section complies with the  
5 provisions of sections 92.096 to 92.102.

6 2. Any business license tax imposed on the gross receipts of a  
7 telecommunications company derived from the business of providing  
8 prepaid wireless telecommunications service after the effective date of  
9 this section shall be imposed only on the gross receipts from retail  
10 sales.

92.102. 1. The provisions of subdivision (3) of subsection 12 of  
2 section 32.087 shall not apply to any business license tax imposed on  
3 the gross receipts of a telecommunications company derived from the  
4 business of providing prepaid wireless telecommunications  
5 service. With respect to prepaid wireless telecommunications service  
6 not subject to such provisions, the gross receipts shall be deemed

7 derived from engaging in business in a municipality and subject to the  
8 municipality's business license tax if the retail sale is effected in  
9 person by the end user at the business location of the  
10 telecommunications company within the municipality. If the retail sale  
11 is not effected in person at the telecommunications company's location,  
12 the sale shall be subject to such tax by attributing the sale to the  
13 location indicated by an address for the purchaser obtained during the  
14 consummation of the sale, such as the address of a purchaser's payment  
15 instrument. If the retail sale is not effected in person by the end user  
16 at the business location of the telecommunications company and an  
17 address is not obtained during the consummation of the sale or is  
18 otherwise not available, the sale shall be subject to such tax by  
19 attributing the sale to a location determined in a reasonable manner  
20 that is supported by the telecommunications company's books and  
21 records. A method that attributes the total of all such sales with  
22 respect to each area code to municipalities in proportion to the  
23 telecommunications company's total sales of prepaid wireless  
24 telecommunications service within the area code shall be deemed  
25 reasonable.

26       2. If the telecommunications company's reliance on the  
27 information provided by the end user is in good faith, a municipality  
28 shall not hold the telecommunications company liable for any  
29 additional taxes, charges, or fees based on a different determination.

30       3. Any telecommunications company may recover from its  
31 customers through a line item charge, or otherwise, all or part of the  
32 business license tax.

Section B. This act shall become effective January 1, 2018.

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