

## MEMORANDUM

April 7, 2003

TO: County Council

FROM: Michael W. Cogan, Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 10-03, *Telecommunications Excise Tax - Amendments*

Councilmember Floreen intends to introduce Expedited Bill 10-03, *Telecommunications Excise Tax- Amendments*, on April 8. The bill would expand the current telephone tax to allow the Council to set separate or additional tax rates for certain wired and wireless electronic communications services, such as those provided over telephone, cable, and direct broadcast satellite equipment. The bill would set initial categories and rates for certain services. The rate for regular local telephone service would stay the same, but would apply to Centrex and wireless lines. The bill would set additional tax rates for broadband and similar data communication services at \$2.50, \$5.00, or \$15.00 a month, depending on the level of service provided.

If the Council decides to adopt a rate change in the current telephone tax, the bill and rate-setting resolution would have to be harmonized before final Council action.

This packet contains:

Expedited Bill 10-04

Legislative Request Report

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Expedited Bill No. 10-04  
Concerning: Telecommunications  
Excise Tax - Amendments  
Revised: Apr. 7, 2003 Draft No. 6  
Introduced: April 8, 2003  
Expires: October 8, 2004  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Floreen.

**AN EXPEDITED ACT** to:

- (1) apply the tax on telephone service providers to those who provide other similar communications services;
- (2) allow the Council to set different tax rates for various types and levels of communications services; and
- (3) generally amend the law regarding taxes on communications services.

By amending

Montgomery County Code  
Chapter 52, Taxation  
Section 52-15

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>           | <i>Added to existing law by original bill.</i>             |
| [Single boldface brackets]   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>    | <i>Added by amendment.</i>                                 |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                        | <i>Existing law unaffected by bill.</i>                    |

*The County Council for Montgomery County, Maryland approves the following Act:*

**Section 1. Section 52-15 of the Code is amended as follows:**

**52-15. [Telephone ] Telecommunications tax.**

- (a) (1) A person who owns a **telephone line** or other communication line for the reception, transmission, or electronic communication of messages [by telephone], data, or other information, or leases, licenses, or sells [telephonic] telephone or other electronic communication services in the County must pay a tax on [the following] those services furnished to customers with a billing address or fixed service address in the County[:].
- [(A) each residence, business, or PBX local exchange access line or trunk line (except telephone lifeline service customers);
- (B) each wireless telephone line; and
- (C) each Centrex local exchange access line or trunk line.]
- (2) The services described in paragraph (1) include telephone services, such as a wired or wireless connection to the local exchange, and any other electronic communication service, such as broadband data service, for which the Council sets a tax rate under paragraph (3). This Section applies to any service described in paragraph (1), without regard to how the service is characterized or regulated under federal or State law. This Section does not apply to:
- (A) a service for which a franchise fee under Chapter 8A is remitted to the County; or
- (B) a person who provides electronic information to a subscriber but does not own, lease, or otherwise control

the wired or wireless facility that delivers that information to a subscriber.

- (3) The Council must by resolution adopted after advertisement and public hearing in accordance with Section 52-17(c) set the monthly tax rate for [each type of line listed] the services described in [paragraph] paragraphs (1) and (2). [A person subject to the tax imposed under this section must pay a tax equal to the sum of each line multiplied by the tax rate for that line.] The Council may set different or additional tax rates for specific types or levels of service, such as residential and non-residential or low- and high-speed broadband data service.
- (b) In this [section] Section:
- [(1)] *Telephone [Line] line* means a wired or wireless connection to the local telephone exchange through a unique telephone number.
- Other communication line* means a wired or wireless connection that provides electronic information to a subscriber for a fee, such as a copper or coaxial wire, an optical fiber, or a direct broadcast satellite earth station. It does not include a wireless connection to an information service that is available to the general public without charge, such as broadcast television or radio.
- [(2)] *Person* means any individual, corporation, company, association, firm, or [co-]partnership, or any group of individuals acting as a unit, and includes any trustee, receiver, assignee, or personal representative.

- [(3)] *Wireless telephone* [means] service includes any equipment or instrument that transmits:
- (A) cellular telephone service;
  - (B) personal communication service; or
  - (C) any other commercial mobile radio service as defined by the Federal Communications Commission.
- (c) Every person liable for the tax must pay the tax and [must report upon such forms and set forth such] provide any information [as] that the [director of finance may prescribe] Director of Finance determines is necessary to administer this Section. The [report and payment of] taxpayer must pay the tax [must be made on or before] and provide the information for each month no later than the fifteenth day of [each] the following month[, covering the immediate preceding calendar month]. [Any person liable for the tax may, upon written application to and with the consent of the ] The Director of Finance[, make reports and remittances on a] may grant or deny a taxpayer's written request to pay the tax and report the information quarterly [basis] instead of [the] monthly [basis. Quarterly reports and remittance must be made], on or before the fifteenth day of April, July, October, and January [in each year, and must cover] for the [three (3) immediately] 3 preceding months. The Director may withdraw or condition a taxpayer's authority to file quarterly by notifying the taxpayer.
- (d) If any person fails or refuses to [remit the] pay a tax [required to be paid or to make a proper return to the director of finance, within the time] when and in the amount [specified] required under this Section, that person is liable for:

- (1) [Interest] interest on the amount of tax due at the rate of [one (1)] 1 percent per month for each month or part of a month after the date [upon which] when the tax [is] was due; and
- (2) [A] a penalty of [five (5)] 5 percent of the amount of the tax per month or part of a month, [not to exceed] up to a total of [twenty-five (25)] 25 percent of the tax. [The interest and penalty is collected as a part of the tax.]

The interest and penalty is collected as a part of the tax.

- (e) If any person fails or refuses to make any report and remittance required within the time provided, the Director of Finance must [obtain information on which to base the Director's] reasonably estimate [of] the tax due[. As soon as the Director obtains sufficient information upon which to base the assessment of any tax due, the Director must] and assess [against the person] the tax and penalties. The Director must notify the person, by mail sent to the person's last-known place of address, of the total amount of the tax, including interest and penalties. The [total amount is payable within ten (10)] person must pay the tax no later than 10 days after the date of the notice.
- (f) Every person liable for [the payment of] any tax under this Section must [keep and preserve, for two (2) years, suitable] make or compile, and retain for 2 years after the tax is due, all records and other information necessary to determine the amount of the person's tax [as that person may have been liable for to the County] liability. The Director of Finance may inspect the records and information at all reasonable times.

- (g) [Whenever any] When a person who is subject to this tax stops doing business or otherwise disposes of the business, [any tax payable to the County is immediately due and payable and] the person [must] immediately [make a report and] must pay any tax due and report any required information to the Director.
- (h) A person is entitled to a refund, under procedures in State or federal law, of the tax paid on any wireless telephone line billed to an address in the County for wireless telephone service that is not available in the County.
- (i) Any violation or failure to comply with this section is a class A violation. Each violation is a separate offense. A conviction does not relieve any person from the payment, collection, or remittance of the tax, including any penalty, interest, or related charges.

## Sec. 2. Initial Rates.

- (a) The County Council may change the initial rates, categories, and exemptions in this Section by resolution adopted under Section 52-15 of the Code, as amended by this Act. This Section supersedes Resolutions 13-161 and 14-190.
- (b) The initial categories and rates for the tax levied under Section 52-15, as amended, are:
- (1) *Basic Rates.* The basic rate is \$0.925 a month on each:
- (A) wired telephone line, including a residence, business, Centrex, PBX local exchange, or other telephone line, except a line furnished to a telephone “lifeline service” customer;
- (B) wireless telephone line; and
- (C) Centrex telephone line.

**Comment:** Codifier’s (editor’s) note in current law:

→Section 1 of 1989 L.M.C., ch. 18, amended § 52-15 in its entirety. Section 2 of the act reads as follows: Sec. 2. Rate of Tax. The rate of the tax levied under section 52-15 from January 1, 1984 until the effective date of this act [January 23, 1989] is 62 cents per month on each residence, business or PBX local exchange access line or trunk line furnished to customers within the County, and 6.2 cents per month on each Centrex local exchange access line or trunk line furnished to customers within the County.

→Resolution No. 12-193, adopted May 8, 1991, effective May 1, 1991, amended the rates of the telephone tax levied under Section 52-15 as follows: \$1.25 per month on each residence, business or PBX local exchange access line or trunk line furnished to customers (except telephone lifeline services customers) in the County; and 12.5 cents per month on each Centrex local exchange access line or trunk line furnished to customers in the County. This resolution expired on June 30, 1995.

- (2) *Additional Rates.* The following rates apply in addition to any rate set by paragraph (1):
- (A) \$2.50 a month on each residential telephone line that provides Integrated Services Digital Network (ISDN), Digital Subscriber Line (DSL), or other similar service capable of transmitting digital electronic data to a customer (download) at speeds of at least 60 kilobits per second (Kbps) but not more than 3000 Kbps.
  - (B) \$2.50 a month for residential cable modem service capable of download at speeds up to 3000 Kbps.
  - (C) \$5.00 a month for each non-residential telephone line that otherwise meets the requirements of subparagraph (A).
  - (D) \$5.00 a month for each residential telephone line capable of providing a service described in subparagraph (A) at speeds greater than 3000 Kbps.
  - (E) \$5.00 a month for non-residential cable modem service or other similar service capable of download speeds up to 3000 Kbps.
  - (F) \$15.00 a month for non-residential cable modem service or other similar service capable of download speeds greater than 3000 Kbps.

**Sec. 3. Expedited Effective Date.**

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law and applies for tax years beginning after June 30, 2003.

*Approved:*

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Michael L. Subin, President, County Council

Date

*Approved:*

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Douglas M. Duncan, County Executive

Date

*This is a correct copy of Council action.*

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Mary A. Edgar, CMC, Clerk of the Council

Date

**LEGISLATIVE REQUEST REPORT**

Bill 10-04

*Telecommunications Excise Tax - Amendments*

- DESCRIPTION:** Expands the County's telephone tax to cover certain other types of communications services.
- PROBLEM:** The County's longstanding telephone tax was expanded several years ago to include wireless telephone service, but otherwise has not been updated to take into account modern premium services that are provided over telephone lines and similar forms of electronic communication.
- GOALS AND OBJECTIVES:** To allow greater flexibility in establishing the categories and rates of taxes that apply to modern and rapidly changing electronic communications services.
- COORDINATION:** The Department of Finance would implement the legislation and collect any taxes it authorizes.
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Michael W. Cogan, Council Staff, (240) 777-7900.
- APPLICATION WITHIN MUNICIPALITIES:** Applies to all providers of the taxable services in the County.
- PENALTIES:** A violation or failure to comply is a class A violation. Each violation is a separate offense. A conviction does not relieve any person from the payment, collection, or remittance of the tax, including any penalty, interest, or related charges.