

ORDINANCE NO. 9798-50

AN ORDINANCE REPEALING SECTION 22-45(1) AND AMENDING SECTION 22-44 OF THE CODE OF ORDINANCES OF THE CITY OF URBANA, ILLINOIS AND ESTABLISHING A TELECOMMUNICATIONS TAX (Taxes - Telecommunications Tax)

WHEREAS, the City is authorized to adopt a tax on the act or privilege of originating or receiving intrastate and interstate telecommunications in the City, pursuant to 65 ILCS 5/8-11-17 and its home rule powers under the 1970 Illinois Constitution.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Chapter 22 of the Code of Ordinances of the City of Urbana, Illinois, as amended, is hereby amended to repeal Section 22-45(1), imposing a tax on persons engaged in the business of transmitting messages by means of electricity.

Section 2. That Section 22-44 of the Code of Ordinances of the City of Urbana, Illinois, as amended, is hereby amended to read as follows:

"Sec. 22-44. Definitions.

For the purposes of this Article, the following definitions shall apply:

*Gross receipts* means the consideration received for distributing, supplying, or furnishing or selling gas, electricity, or water for use or consumption and not for resale, as the case may be; and for all services rendered in connection therewith valued in money, whether cash, credit, services and property of every kind and material and for all services rendered therewith; and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of material used, labor or service cost, or any other expenses whatsoever.

*Person* means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator or other representative appointed by order of any court."

Section 3. That Chapter 22 of the Code of Ordinances of the City of Urbana, Illinois, as amended, is hereby amended by the addition of Article IV.A entitled "Telecommunications Tax", which shall read as follows:

**"ARTICLE IV.A TELECOMMUNICATIONS TAX ACT.**

**Sec. 22-50. Telecommunications Tax Ordinance.**

This Article shall be known and cited as the 'Urbana Telecommunications Tax Ordinance'. The tax imposed within this Article shall be known as the 'Urbana telecommunications tax' and is imposed in addition to all other taxes imposed by the City of Urbana, the State of Illinois or any other municipal corporation or political subdivision thereof.

**Sec. 22-51. Definitions.**

When any of the following words or terms are used in this Article, whether or not capitalized, they shall have the meaning or construction ascribed to them in this Section:

- (a) 'City' means the City of Urbana, Illinois.
- (b) '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 by applicable Federal income tax standards.
- (c) 'Department' or 'Finance Department' means the Finance Department of the City.
- (d) 'Comptroller' means the Comptroller of the City.
- (e) 'Gross charge' means the amount paid for the act or privilege of originating or receiving telecommunications in the City, and for all services rendered in connection therewith, 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

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. However, 'gross charges' shall not include:

- (1) Any amounts added to a purchaser's bill because of a charge made pursuant to: (a) the tax imposed by this Article; (b) additional charges added to a purchaser's bill pursuant to Section 9-222 of the Illinois Public Utilities Act; (c) the tax imposed by the Illinois Telecommunications Excise Tax Act; or (d) the tax imposed by Section 4251 of the United States Internal Revenue Code;
- (2) Charges for a sent collect telecommunication received outside of the City;
- (3) Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. This subsection (e)(3) applies, but is not limited, to the use of calculators, computers, data processing equipment, tabulating equipment and accounting equipment and also applies to the usage of computers under a time-sharing agreement;
- (4) Charges for customer equipment, including equipment that is leased or rented by the customer from any source, provided that such charges are desegregated and separately identified from other charges;
- (5) Charges to business enterprises certified under Section 9-222.1 of the Illinois Public Utilities Act

to the extent of such exemption and during the period of time specified by the Illinois Department of Commerce and Community Affairs;

- (6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries, or between the wholly owned subsidiaries, when the tax imposed under this Chapter previously was paid to a retailer, but only to the extent that the charges between the parent corporation and wholly owned subsidiaries, represent an expense allocation between the corporations and not the generation of profit for the corporation rendering such service;
  - (7) Bad debts, provided, however, that if any portion of a debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion of the debt paid during the reporting period; or
  - (8) Charges paid by inserting coins in coin-operated telecommunication devices.
- (g) 'Interstate telecommunications' means all telecommunications that originate or terminate outside the State of Illinois.
  - (h) 'Intrastate telecommunications' means all telecommunications that originate and terminate within the State of Illinois.
  - (i) 'Person' means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, any receiver, trustee, guardian or other representative appointed by order of any

court, the Federal government, the State government, state universities created by statute, or any city, town, county or other political subdivision of this State.

- (j) 'Purchase at retail' means the acquisition, consumption or use of telecommunications through a sale at retail.
- (k) 'Retailer' means and includes every person engaged in the business of making sales at retail as defined in subsection (m) of this Section.
- (l) 'Retailer maintaining a place of business in this State', or any like designation, means and includes any retailer having or maintaining within the State of Illinois, 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 the State of Illinois under the authority of the retailer or its subsidiary, irrespective of whether such place of business, agent or other representative is located in the State of Illinois permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in Illinois.
- (m) 'Sale at retail' means the transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for consideration:
  - (1) To persons other than the City, Federal government, State governments and state universities created by statute; and
  - (2) Other than between a parent corporation and its wholly owned subsidiaries, or between the wholly owned subsidiaries, but only when the tax previously has been paid to a retailer and the gross charge made by one such corporation to another such corporation is

not greater than the gross charge paid to the retailer for their use or consumption and not for resale.

- (n) 'Service address' means the location of telecommunications equipment from which telecommunications are originated or at which telecommunications are received by a taxpayer. If this location is not a defined location, as in the case of mobile phones, paging systems, maritime systems, 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.
- (o) 'Taxpayer' means a person that individually, or through its agents, employees or permittees, engaged in the act or privilege of originating or receiving telecommunications in the City and that incurs a tax liability under this Chapter.
- (p) (1) 'Telecommunications', in addition to the usual and popular meaning, includes but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, teletypewriter service, computer exchange service, cellular mobile telecommunications service, specialized mobile radio services, 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.
- (2) The definition of 'telecommunications' set forth in subsection (p)(1) shall not

include: (a) 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; or (b) purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by it to the ultimate retail consumer originating or terminating the taxable end-to-end telecommunications.

**Sec. 22-52. Tax Imposed.**

- (a) A tax is hereby imposed upon:
- (1) The act or privilege of originating in the City or receiving in the City intrastate telecommunications by a person at a rate of five (5) percent of the gross charge for such telecommunications purchased at retail from a retailer; and
  - (2) The act or privilege of originating in the City or receiving in the City interstate telecommunications by a person at the rate of five (5) percent of the gross charge for such telecommunications purchased at retail from a retailer.
- (b) To prevent actual multi-state taxation of the act or privilege that is subject to taxation under subsection (a) (2) of this Section, any taxpayer, upon proof that the taxpayer has paid a tax in another state on the same event, shall be allowed a credit against the tax authorized by subsection (a) (2) to the extent of the amount of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in this State.

- (c) The tax imposed by this Chapter is not imposed on any act or privilege to the extent that such act or privilege may not, under the Constitution or statutes of the United States, be made the subject of taxation by the City.
- (d) Carrier access charges, right of access charges, charges for use of intercompany facilities and all telecommunications resold in the subsequent provision of, used as a component of or integrated into end-to-end telecommunications service are sales for resale and are not subject to the tax imposed by this Chapter.

**Sec. 22-53. Collection of Tax by Retailers.**

- (a)
  - (1) Any retailer maintaining a place of business in this State and making or effectuating a sale at retail shall collect the tax imposed by this Chapter from the taxpayer and remit it to the Department as provided by Section 22-54 of this Chapter.
  - (2) Any tax required to be collected pursuant to this Chapter and any tax collected by the retailer shall constitute a debt owed by the retailer to the City.
  - (3) The retailer 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 this Chapter.
  - (4) The tax imposed by this Chapter shall constitute a debt of the purchaser to the retailer providing taxable services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for taxable services.



- (b) The Comptroller shall, upon application, authorize the collection of this tax by any retailer not maintaining a place of business in this State who, to the satisfaction of the Comptroller, furnishes adequate security to ensure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect the tax imposed by this Chapter. When so authorized, it shall be the duty of the retailer to collect the tax upon all of the gross charges for telecommunications originated or received in the City in the same manner, and subject to the same requirements, as a retailer maintaining a place of business in this State.
- (c) The tax authorized by this Chapter shall, when collected, be stated as a distinct item separate and apart from the gross charges for telecommunications.
- (d) Retailers may retain 1.75 percent of the tax they collect to reimburse them for expenses incurred in connection with collecting and remitting the tax, less any charges allowed by the Illinois Commerce Commission that permits them to recover such expenses. This commission shall not be allowed for taxes not timely remitted to the Department.

**Sec. 22-54. Filing Returns and Remittances by Retailers.**

On or before the last day of each calendar month, every retailer maintaining a place of business in this State and every retailer authorized by the Comptroller to collect the tax imposed by this Chapter shall file with the Department a remittance return and remit all applicable tax for the preceding calendar month. The return shall be filed on a form prescribed by the Comptroller, containing such information as the Comptroller may reasonably require.

**Sec. 22-55. Registration.**

Every retailer maintaining a place of business in this State shall register with the Department within thirty (30) days after the effective date of this Chapter or the date of becoming such a retailer, whichever is later.

**Sec. 22-56. Obligation of Taxpayers to File Returns and Pay Tax.**

- (a) If a retailer fails to collect the tax imposed by this Chapter from a taxpayer, as required by Section 22-53, then the taxpayer shall pay the tax directly to the Department.
- (b) On or before the last day of each calendar month, every taxpayer that has not paid the tax imposed by this Chapter to a retailer shall file with the Department a tax return and pay the tax upon the gross charges the taxpayer paid to the retailer during the preceding calendar month. The return shall be filed on a form prescribed by the Comptroller, containing such information as the Comptroller may reasonably require.

**Sec. 22-57. Resale Numbers.**

- (a) If a person who originates or receives telecommunications in the City claims to be a reseller of telecommunications, the person shall apply to the Department for a resale number. The applicant shall state facts showing why it is not liable for the tax imposed by this Chapter on any purchases of telecommunications and shall furnish such additional information as the Department may reasonably require.
- (b) Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify the number to the applicant.
- (c) The Department may cancel the resale number of any person if the number: (1) was obtained through misrepresentation; (2) is used to originate or receive telecommunications tax-free when such telecommunications are not for resale;

or (3) is no longer necessary because the person has discontinued making resales.

- (d) The act or privilege of originating or receiving telecommunications in the City shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number issued by the Department and furnishes that number to the retailer in connection with certifying to the retailer that a sale is non-taxable as a sale for resale.

**Sec. 22-58. Maintaining Books and Records.**

Every retailer maintaining a place of business in this State, every retailer authorized by the Comptroller to collect the tax imposed by this Chapter, and every taxpayer required by Section 22-56 to pay the tax directly to the Department shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transactions that gave rise, or may have given rise, to any tax liability or exemption. All such books and records shall be kept in the English language and, at all times during business hours of the day, shall be subject to and available for inspection by the Department.

**Sec. 22-59. Rules and Regulations.**

The Comptroller is authorized to adopt, promulgate and enforce rules and regulations pertaining to the administration and enforcement of this Chapter.

Section 4. That the effective date of this Ordinance is January 1, 1998.

Section 5. That the City Clerk is hereby directed to publish this Ordinance in pamphlet form so that its effective date is January 1, 1998.

Section 6. That if any section, paragraph or provision of this Ordinance is held to be invalid or unenforceable, such invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance or the provisions of the Code.

Section 7. That the provisions of this Ordinance shall take precedence and be interpreted as superseding any other ordinance or statute in conflict with the provisions of this Ordinance.

Section 8. That by October 30, 1997, the City Comptroller is hereby directed to send a copy of this Ordinance to all persons who are required to remit and have remitted payments to the City pursuant to Section 22-45(1) of the Code of Ordinances of the City of Urbana, Illinois during Fiscal Year 1996-97.

PASSED by the Urbana City Council the 20th day of October, 1997.

AYES: Hayes, Huth, Patt, Wyman

NAYS: Kearns, ~~Taylor~~, Whelan

ABSTAINED:



Phyllis D. Clark  
Phyllis D. Clark, City Clerk

APPROVED by the Mayor the 10<sup>th</sup> day of November, 1997.

Tod Satterthwaite  
Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the corporate authorities of the City of Urbana passed and approved Ordinance No. \_\_\_\_\_, entitled "AN ORDINANCE REPEALING SECTION 22-45(1) AND AMENDING SECTION 22-44 OF THE CODE OF ORDINANCES OF THE CITY OF URBANA, ILLINOIS AND ESTABLISHING A TELECOMMUNICATIONS TAX (Taxes - Telecommunications Tax)", which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. \_\_\_\_\_ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_.

(SEAL)

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CITY CLERK