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HOUSE BILL 1207

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State of Washington

55th Legislature

1997 Regular Session

By Representatives D. Schmidt, Dunshee, Poulsen, Kessler and Mielke; by request of Military Department

Read first time 01/17/97. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to enhanced 911 excise taxes; amending RCW  
2 82.14B.020, 82.14B.030, 82.14B.040, 82.14B.060, 82.32.010, and  
3 82.32.105; adding new sections to chapter 82.14B RCW; prescribing  
4 penalties; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 82.14B.020 and 1994 c 96 s 2 are each amended to read  
7 as follows:

8 As used in this chapter:

9 (1) "Emergency services communication system" means a multicounty,  
10 county-wide, or district-wide radio or landline communications network,  
11 including an enhanced 911 telephone system, which provides rapid public  
12 access for coordinated dispatching of services, personnel, equipment,  
13 and facilities for police, fire, medical, or other emergency services.

14 (2) "Enhanced 911 telephone system" means a public telephone system  
15 consisting of a network, data base, and on-premises equipment that is  
16 accessed by dialing 911 and that enables reporting police, fire,  
17 medical, or other emergency situations to a public safety answering  
18 point. The system includes the capability to selectively route  
19 incoming 911 calls to the appropriate public safety answering point

1 that operates in a defined 911 service area and the capability to  
2 automatically display the name, address, and telephone number of  
3 incoming 911 calls at the appropriate public safety answering point.

4 (3) "Switched access line" means the telephone service line which  
5 connects a subscriber's main telephone(s) or equivalent main  
6 telephone(s) to the local exchange company's switching office.

7 (4) "Local exchange company" has the meaning ascribed to it in RCW  
8 80.04.010.

9 (5) "Radio access line" means the telephone number assigned to or  
10 used by (~~an end user~~) a subscriber for two-way local wireless voice  
11 service available to the public for hire from a radio communications  
12 service company. Radio access lines include, but are not limited to,  
13 radio-telephone communications lines used in cellular telephone  
14 service, personal communications services, and network radio access  
15 lines, or their functional and competitive equivalent. Radio access  
16 lines do not include lines that provide access to one-way signaling  
17 service, such as paging service, or to communications channels suitable  
18 only for data transmission, or to nonlocal radio access line service,  
19 such as wireless roaming service, or to a private telecommunications  
20 system.

21 (6) "Radio communications service company" has the meaning ascribed  
22 to it in RCW 80.04.010.

23 (7) "Private telecommunications system" has the meaning ascribed to  
24 it in RCW 80.04.010.

25 (8) "Subscriber" means the retail purchaser of telephone service as  
26 telephone service is defined in RCW 82.04.065(3).

27 **Sec. 2.** RCW 82.14B.030 and 1994 c 96 s 3 are each amended to read  
28 as follows:

29 (1) The legislative authority of a county may impose a county  
30 enhanced 911 excise tax on the use of switched access lines in an  
31 amount not exceeding fifty cents per month for each switched access  
32 line. The amount of tax shall be uniform for each switched access  
33 line. Each county shall provide notice of such tax to all local  
34 exchange companies serving in the county at least sixty days in advance  
35 of the date on which the first payment is due.

36 (2) The legislative authority of a county may also impose a county  
37 911 excise tax on the use of radio access lines located within the  
38 county in an amount not exceeding twenty-five cents per month for each

1 radio access line. The amount of tax shall be uniform for each radio  
2 access line. The county shall provide notice of such tax to all radio  
3 communications service companies serving in the county at least sixty  
4 days in advance of the date on which the first payment is due. Any  
5 county imposing this tax shall include in its ordinance a refund  
6 mechanism whereby the amount of any tax ordered to be refunded by the  
7 judgment of a court of record, or as a result of the resolution of any  
8 appeal therefrom, shall be refunded to the radio communications service  
9 company or local exchange company that collected the tax, and those  
10 companies shall reimburse the ((users)) subscribers who paid the tax.  
11 The ordinance shall further provide that to the extent the ((users))  
12 subscribers who paid the tax cannot be identified or located, the tax  
13 paid by those ((users)) subscribers shall be returned to the county.

14 (3) Beginning January 1, 1992, a state enhanced 911 excise tax is  
15 imposed on all switched access lines in the state. For 1992, the tax  
16 shall be set at a rate of twenty cents per month for each switched  
17 access line. Until December 31, 1998, the amount of tax shall not  
18 exceed twenty cents per month for each switched access line and  
19 thereafter shall not exceed ten cents per month for each switched  
20 access line. The tax shall be uniform for each switched access line.  
21 Tax proceeds shall be deposited by the treasurer in the enhanced 911  
22 account created in RCW 38.52.540.

23 (4) By August 31st of each year the state enhanced 911 coordinator  
24 shall recommend the level for the next year of the state enhanced 911  
25 excise tax to the utilities and transportation commission. The  
26 commission shall by the following October 31st determine the level of  
27 the state enhanced 911 excise tax for the following year.

28 **Sec. 3.** RCW 82.14B.040 and 1994 c 96 s 4 are each amended to read  
29 as follows:

30 The state enhanced 911 tax and the county enhanced 911 tax on  
31 switched access lines shall be collected from the ((user)) subscriber  
32 by the local exchange company providing the switched access line. The  
33 county 911 tax on radio access lines shall be collected from the ((end  
34 user)) subscriber by the radio communications service company providing  
35 the radio access line to the ((end-user)) subscriber. The amount of  
36 the tax shall be stated separately on the billing statement which is  
37 sent to the ((user)) subscriber.

1       **Sec. 4.** RCW 82.14B.060 and 1981 c 160 s 6 are each amended to read  
2 as follows:

3       A county legislative authority imposing a tax under this chapter  
4 shall establish by ordinance all necessary and appropriate procedures  
5 for the administration and collection of the tax, which ordinance shall  
6 provide for reimbursement to the telephone companies for actual costs  
7 of administration and collection of the tax imposed. The ordinance  
8 shall also provide that the due date for remittance of the tax  
9 collected shall be (~~(thirty days following the collection month)~~) on or  
10 before the last day of the month following the month in which the tax  
11 liability accrues.

12       NEW SECTION. **Sec. 5.** A new section is added to chapter 82.14B RCW  
13 to read as follows:

14       (1) The department of revenue shall administer and shall adopt such  
15 rules as may be necessary to enforce and administer the state enhanced  
16 911 excise tax imposed by this chapter. Chapter 82.32 RCW, with the  
17 exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the  
18 administration, collection, and enforcement of the state enhanced 911  
19 excise tax.

20       (2) The state enhanced 911 excise tax imposed by this chapter,  
21 along with reports and returns on forms prescribed by the department,  
22 are due monthly on or before the last day of the month following the  
23 month in which the tax liability accrues.

24       (3) The department of revenue may relieve any taxpayer or class of  
25 taxpayers from the obligation of remitting monthly and may require the  
26 return to cover other longer reporting periods, but in no event may  
27 returns be filed for a period greater than one year. For these  
28 taxpayers, tax payments are due on or before the last day of the month  
29 next succeeding the end of the period covered by the return.

30       (4) The state enhanced 911 excise tax imposed by this chapter is in  
31 addition to any taxes imposed upon the same persons under chapters  
32 82.08 and 82.12 RCW.

33       NEW SECTION. **Sec. 6.** A new section is added to chapter 82.14B RCW  
34 to read as follows:

35       (1) A local exchange company or radio communications service  
36 company shall file tax returns on a cash receipts or accrual basis  
37 according to which method of accounting is regularly employed in

1 keeping the books of the company. A local exchange company or radio  
2 communications service company filing returns on a cash receipts basis  
3 is not required to pay tax on debts that are deductible as worthless  
4 for federal income tax purposes.

5 (2) A local exchange company or radio communications service  
6 company is entitled to a credit or refund for state enhanced 911 excise  
7 taxes previously paid on debts that are deductible as worthless for  
8 federal income tax purposes.

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.14B RCW  
10 to read as follows:

11 The taxes imposed by this chapter do not apply to any activity that  
12 the state or county is prohibited from taxing under the constitution of  
13 this state or the constitution or laws of the United States.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.14B RCW  
15 to read as follows:

16 (1) The state enhanced 911 excise tax imposed by this chapter must  
17 be paid by the subscriber to the local exchange company providing the  
18 switched access line, and each local exchange company shall collect  
19 from the subscriber the full amount of the tax payable. The state  
20 enhanced 911 excise tax required by this chapter to be collected by the  
21 local exchange company is deemed to be held in trust by the local  
22 exchange company until paid to the department. Any local exchange  
23 company that appropriates or converts the tax collected to its own use  
24 or to any use other than the payment of the tax to the extent that the  
25 money collected is not available for payment on the due date as  
26 prescribed in this chapter is guilty of a gross misdemeanor.

27 (2) If any local exchange company fails to collect the state  
28 enhanced 911 excise tax or, after collecting the tax, fails to pay it  
29 to the department in the manner prescribed by this chapter, whether  
30 such failure is the result of its own act or the result of acts or  
31 conditions beyond its control, the local exchange company is personally  
32 liable to the state for the amount of the tax, unless the local  
33 exchange company has taken from the buyer in good faith a properly  
34 executed resale certificate under section 9 of this act.

35 (3) The amount of tax, until paid by the subscriber to the local  
36 exchange company or to the department, constitutes a debt from the  
37 subscriber to the local exchange company. Any local exchange company

1 that fails or refuses to collect the tax as required with intent to  
2 violate the provisions of this chapter or to gain some advantage or  
3 benefit, either direct or indirect, and any subscriber who refuses to  
4 pay any tax due under this chapter is guilty of a misdemeanor. The  
5 state enhanced 911 excise tax required by this chapter to be collected  
6 by the local exchange company must be stated separately on the billing  
7 statement that is sent to the subscriber.

8 (4) If a subscriber has failed to pay to the local exchange company  
9 the state enhanced 911 excise tax imposed by this chapter and the local  
10 exchange company has not paid the amount of the tax to the department,  
11 the department may, in its discretion, proceed directly against the  
12 subscriber for collection of the tax, in which case a penalty of ten  
13 percent may be added to the amount of the tax for failure of the  
14 subscriber to pay the tax to the local exchange company, regardless of  
15 when the tax is collected by the department. For the sole purpose of  
16 applying the various provisions of chapter 82.32 RCW, the last day of  
17 the month following the tax period in which the tax liability accrued  
18 is to be considered as the due date of the tax.

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.14B RCW  
20 to read as follows:

21 (1) Unless a local exchange company has taken from the buyer a  
22 resale certificate or equivalent document under RCW 82.04.470, the  
23 burden of proving that a sale of the use of a switched access lines was  
24 not a sale to a subscriber is upon the person who made the sale.

25 (2) If a local exchange company does not receive a resale  
26 certificate at the time of the sale, have a resale certificate on file  
27 at the time of the sale, or obtain a resale certificate from the buyer  
28 within a reasonable time after the sale, the local exchange company  
29 remains liable for the tax as provided in section 8 of this act, unless  
30 the local exchange company can demonstrate facts and circumstances  
31 according to rules adopted by the department of revenue that show the  
32 sale was properly made without payment of the state enhanced 911 excise  
33 tax.

34 (3) The penalty imposed by RCW 82.32.291 may not be assessed on  
35 state enhanced 911 excise taxes due but not paid as a result of the  
36 improper use of a resale certificate. This subsection does not  
37 prohibit or restrict the application of other penalties authorized by  
38 law.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 82.14B  
2 RCW to read as follows:

3        (1) Upon termination, dissolution, or abandonment of a corporate or  
4 limited liability company business, any officer, member, manager, or  
5 other person having control or supervision of state enhanced 911 excise  
6 tax funds collected and held in trust under section 8 of this act, or  
7 who is charged with the responsibility for the filing of returns or the  
8 payment of state enhanced 911 excise tax funds collected and held in  
9 trust under section 8 of this act, is personally liable for any unpaid  
10 taxes and interest and penalties on those taxes, if such officer or  
11 other person willfully fails to pay or to cause to be paid any state  
12 enhanced 911 excise taxes due from the corporation under this chapter.  
13 For the purposes of this section, any state enhanced 911 excise taxes  
14 that have been paid but not collected are deductible from the state  
15 enhanced 911 excise taxes collected but not paid. For purposes of this  
16 subsection "willfully fails to pay or to cause to be paid" means that  
17 the failure was the result of an intentional, conscious, and voluntary  
18 course of action.

19        (2) The officer, member, manager, or other person is liable only  
20 for taxes collected that became due during the period he or she had the  
21 control, supervision, responsibility, or duty to act for the  
22 corporation described in subsection (1) of this section, plus interest  
23 and penalties on those taxes.

24        (3) Persons liable under subsection (1) of this section are exempt  
25 from liability if nonpayment of the state enhanced 911 excise tax funds  
26 held in trust is due to reasons beyond their control as determined by  
27 the department by rule.

28        (4) Any person having been issued a notice of assessment under this  
29 section is entitled to the appeal procedures under RCW 82.32.160  
30 through 82.32.200.

31        (5) This section applies only if the department has determined that  
32 there is no reasonable means of collecting the state enhanced 911  
33 excise tax funds held in trust directly from the corporation.

34        (6) This section does not relieve the corporation or limited  
35 liability company of other tax liabilities or otherwise impair other  
36 tax collection remedies afforded by law.

37        (7) Collection authority and procedures prescribed in chapter 82.32  
38 RCW apply to collections under this section.

1       **Sec. 11.** RCW 82.32.010 and 1984 c 204 s 26 are each amended to  
2 read as follows:

3       The provisions of this chapter shall apply with respect to the  
4 taxes imposed under chapters 82.04 through 82.14 RCW, under RCW  
5 82.14B.030(3), under chapters 82.16 through 82.29A RCW of this title,  
6 under chapter 84.33 RCW, and under other titles, chapters, and sections  
7 in such manner and to such extent as indicated in each such title,  
8 chapter, or section.

9       **Sec. 12.** RCW 82.32.105 and 1996 c 149 s 17 are each amended to  
10 read as follows:

11       (1) If the department of revenue finds that the payment by a  
12 taxpayer of a tax less than that properly due or the failure of a  
13 taxpayer to pay any tax by the due date was the result of circumstances  
14 beyond the control of the taxpayer, the department of revenue shall  
15 waive or cancel any penalties imposed under this chapter with respect  
16 to such tax.

17       (2) The department shall waive or cancel the penalty imposed under  
18 RCW 82.32.090(1) when the circumstances under which the delinquency  
19 occurred do not qualify for waiver or cancellation under subsection (1)  
20 of this section if:

21       (a) The taxpayer requests the waiver for a tax return required to  
22 be filed under RCW 82.32.045, section 5 of this act, 82.23B.020,  
23 82.27.060, 82.29A.050, or 84.33.086; and

24       (b) The taxpayer has timely filed and remitted payment on all tax  
25 returns due for that tax program for a period of twenty-four months  
26 immediately preceding the period covered by the return for which the  
27 waiver is being requested.

28       (3) The department shall waive or cancel interest imposed under  
29 this chapter if:

30       (a) The failure to timely pay the tax was the direct result of  
31 written instructions given the taxpayer by the department; or

32       (b) The extension of a due date for payment of an assessment of  
33 deficiency was not at the request of the taxpayer and was for the sole  
34 convenience of the department.

35       (4) The department of revenue shall adopt rules for the waiver or  
36 cancellation of penalties and interest imposed by this chapter.



1      NEW SECTION.    **Sec. 13.**    This act takes effect January 1, 1998.

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