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SENATE BILL 6448

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State of Washington

58th Legislature

2004 Regular Session

By Senators Zarelli, Prentice and Winsley; by request of Department of Revenue

Read first time 01/20/2004. Referred to Committee on Ways & Means.

1 AN ACT Relating to transferring responsibility for collecting  
2 certain telephone program excise taxes from the department of social  
3 and health services to the department of revenue; amending RCW  
4 43.20A.725 and 80.36.430; adding a new chapter to Title 82 RCW;  
5 creating new sections; prescribing penalties; and providing an  
6 effective date.

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

8 **Sec. 1.** RCW 43.20A.725 and 2001 c 210 s 2 are each amended to read  
9 as follows:

10 (1) The department, through the sole authority of the office or its  
11 successor organization, shall maintain a program whereby an individual  
12 of school age or older who possesses a hearing or speech impairment is  
13 provided with telecommunications equipment, software, and/or peripheral  
14 devices, digital or otherwise, that is determined by the office to be  
15 necessary for such a person to access and use telecommunications  
16 transmission services effectively.

17 (2) The department, through the sole authority of the office or its  
18 successor organization, shall maintain a program where  
19 telecommunications relay services of a human or electronic nature will

1 be provided to connect hearing impaired, deaf-blind, or speech impaired  
2 persons with persons who do not have a hearing or speech impairment.  
3 Such telecommunications relay services shall provide the ability for an  
4 individual who has a hearing or speech impairment to engage in voice,  
5 tactile, or visual communication by wire or radio with a hearing  
6 individual in a manner that is functionally equivalent to the ability  
7 of an individual who does not have a hearing or speech impairment to  
8 communicate using voice or visual communication services by wire or  
9 radio subject to subsection (4)(b) of this section.

10 (3) The telecommunications relay service and equipment distribution  
11 program may operate in such a manner as to provide communications  
12 transmission opportunities that are capable of incorporating new  
13 technologies that have demonstrated benefits consistent with the intent  
14 of this chapter and are in the best interests of the citizens of this  
15 state.

16 (4) The office shall administer and control the award of money to  
17 all parties incurring costs in implementing and maintaining  
18 telecommunications services, programs, equipment, and technical support  
19 services according to this section. The relay service contract shall  
20 be awarded to an individual company registered as a telecommunications  
21 company by the utilities and transportation commission, to a group of  
22 registered telecommunications companies, or to any other company or  
23 organization determined by the office as qualified to provide relay  
24 services, contingent upon that company or organization being approved  
25 as a registered telecommunications company prior to final contract  
26 approval. The relay system providers and telecommunications equipment  
27 vendors shall be selected on the basis of cost-effectiveness and  
28 utility to the greatest extent possible under the program and technical  
29 specifications established by the office.

30 (a) To the extent funds are available under the then-current rate  
31 and not otherwise held in reserve or required for other purposes  
32 authorized by this chapter, the office may award contracts for  
33 communications and related services and equipment for hearing impaired  
34 or speech impaired individuals accessing or receiving services provided  
35 by, or contracted for, the department to meet access obligations under  
36 Title 2 of the federal Americans with disabilities act or related  
37 federal regulations.

1 (b) The office shall perform its duties under this section with the  
2 goal of achieving functional equivalency of access to and use of  
3 telecommunications services similar to the enjoyment of access to and  
4 use of such services experienced by an individual who does not have a  
5 hearing or speech impairment only to the extent that funds are  
6 available under the then-current rate and not otherwise held in reserve  
7 or required for other purposes authorized by this chapter.

8 (5) The program shall be funded by a telecommunications relay  
9 service (TRS) excise tax applied to each switched access line provided  
10 by the local exchange companies. The office shall determine, in  
11 consultation with the office's program advisory committee, the budget  
12 needed to fund the program on an annual basis, including both  
13 operational costs and a reasonable amount for capital improvements such  
14 as equipment upgrade and replacement. The budget proposed by the  
15 office, together with documentation and supporting materials, shall be  
16 submitted to the office of financial management for review and  
17 approval. The approved budget shall be given by the department in an  
18 annual budget to the ~~((utilities and transportation commission))~~  
19 department of revenue no later than March 1<sup>st</sup> prior to the beginning of  
20 the fiscal year. The ~~((utilities and transportation commission))~~  
21 department of revenue shall then determine the amount of  
22 telecommunications relay service excise tax to be placed on each  
23 switched access line and shall inform ~~((each))~~ local exchange  
24 ~~((company))~~ companies and the utilities and transportation commission  
25 of this amount no later than May ~~((15))~~ 1<sup>st</sup>. The ~~((utilities and~~  
26 ~~transportation commission))~~ department of revenue shall determine the  
27 amount of telecommunications relay service excise tax to be collected  
28 in the following fiscal year by dividing the total of the program  
29 budget, as submitted by the office, by the total number of switched  
30 access lines in the prior calendar year, as reported to the department  
31 of revenue under chapter 82.14B RCW, and shall not exercise any further  
32 oversight of the program under this subsection other than administering  
33 the collection of the telecommunications relay service excise tax as  
34 provided in sections 3 through 11 of this act. The telecommunications  
35 relay service excise tax shall not exceed nineteen cents per month per  
36 access line. ~~((Each local exchange company shall impose the amount of~~  
37 ~~excise tax determined by the commission as of July 1, and shall remit~~  
38 ~~the amount collected directly to the department on a monthly basis.))~~

1 The telecommunications relay service excise tax shall be separately  
2 identified on each ratepayer's bill with the following statement:  
3 "Funds federal ADA requirement." All proceeds from the  
4 telecommunications relay service excise tax shall be put into a fund to  
5 be administered by the office through the department. "Switched access  
6 line" has the meaning provided in RCW 82.14B.020.

7 (6) The telecommunications relay service program and equipment  
8 vendors shall provide services and equipment consistent with the  
9 requirements of federal law for the operation of both interstate and  
10 intrastate telecommunications services for the hearing impaired or  
11 speech impaired. The department and the utilities and transportation  
12 commission shall be responsible for ensuring compliance with federal  
13 requirements and shall provide timely notice to the legislature of any  
14 legislation that may be required to accomplish compliance.

15 (7) The department shall adopt rules establishing eligibility  
16 criteria, ownership obligations, financial contributions, and a program  
17 for distribution to individuals requesting and receiving such  
18 telecommunications devices distributed by the office, and other rules  
19 necessary to administer programs and services consistent with this  
20 chapter.

21 **Sec. 2.** RCW 80.36.430 and 2003 c 134 s 4 are each amended to read  
22 as follows:

23 (1) The Washington telephone assistance program shall be funded by  
24 a telephone assistance excise tax on all switched access lines and by  
25 funds from any federal government or other programs for this purpose.  
26 Switched access lines are defined in RCW 82.14B.020. The telephone  
27 assistance excise tax shall be applied equally to all residential and  
28 business access lines not to exceed fourteen cents per month. The  
29 department shall submit an approved annual budget for the Washington  
30 telephone assistance program to the department of revenue no later than  
31 March 1st prior to the beginning of each fiscal year. The department  
32 of revenue shall then determine the amount of telephone assistance  
33 excise tax to be placed on each switched access line and shall inform  
34 local exchange companies and the utilities and transportation  
35 commission of this amount no later than May 1st. The department of  
36 revenue shall determine the amount of telephone assistance excise tax  
37 by dividing the total of the program budget funded by the telephone

1 assistance excise tax, as submitted by the department, by the total  
2 number of switched access lines in the prior calendar year. The  
3 telephone assistance excise tax shall be separately identified on each  
4 ratepayer's bill as the "Washington telephone assistance program." All  
5 money collected from the telephone assistance excise tax shall be  
6 transferred to a telephone assistance fund administered by the  
7 department.

8 (2) Local exchange companies shall bill the fund for their expenses  
9 incurred in offering the telephone assistance program, including  
10 administrative and program expenses. The department shall disburse the  
11 money to the local exchange companies. The department is exempted from  
12 having to conclude a contract with local exchange companies in order to  
13 effect this reimbursement. The department shall recover its  
14 administrative costs from the fund. The department may specify by rule  
15 the range and extent of administrative and program expenses that will  
16 be reimbursed to local exchange companies.

17 (3) The department shall enter into an agreement with the  
18 department of community, trade, and economic development for an amount  
19 not to exceed eight percent of the prior fiscal year's total revenue  
20 for the administrative and program expenses of providing community  
21 service voice mail services. The community service voice mail service  
22 may include toll-free lines in community action agencies through which  
23 recipients can access their community service voice mailboxes at no  
24 charge.

25 NEW SECTION. Sec. 3. The definitions in this section apply  
26 throughout this chapter unless the context clearly requires otherwise.

27 (1) "Switched access line" has the meaning provided in RCW  
28 82.14B.020.

29 (2) "Local exchange company" has the meaning provided in RCW  
30 80.04.010.

31 (3) "Subscriber" means the retail purchaser of telephone service as  
32 telephone service is defined in RCW 82.04.065(3).

33 (4) "Telephone program excise taxes" means the taxes on switched  
34 access lines imposed by RCW 43.20A.725 and 80.36.430.

35 NEW SECTION. Sec. 4. The department shall collect the telephone  
36 program excise taxes on behalf of the department of social and health

1 services at no cost to the department of social and health services.  
2 The telephone program excise taxes shall be remitted to the department  
3 by local exchange companies on a tax return provided by the department.  
4 All telephone program excise taxes shall be deposited by the treasurer  
5 into the account described in RCW 43.20A.725 and the account described  
6 in RCW 80.36.430.

7 NEW SECTION. **Sec. 5.** Telephone program excise taxes shall be  
8 collected from the subscriber by the local exchange company providing  
9 the switched access line.

10 NEW SECTION. **Sec. 6.** (1) Telephone program excise taxes must be  
11 paid by the subscriber to the local exchange company providing the  
12 switched access line, and each local exchange company shall collect  
13 from the subscriber the full amount of the taxes payable. Telephone  
14 program excise taxes to be collected by the local exchange company are  
15 deemed to be held in trust by the local exchange company until paid to  
16 the department. Any local exchange company that appropriates or  
17 converts the tax collected to its own use or to any use other than the  
18 payment of the tax to the extent that the money collected is not  
19 available for payment on the due date as prescribed in this chapter is  
20 guilty of a gross misdemeanor.

21 (2) If any local exchange company fails to collect telephone  
22 program excise taxes or, after collecting the tax, fails to pay it to  
23 the department in the manner prescribed by this chapter, whether such  
24 failure is the result of its own act or the result of acts or  
25 conditions beyond its control, the local exchange company is personally  
26 liable to the state for the amount of the tax, unless the local  
27 exchange company has taken from the buyer in good faith a properly  
28 executed resale certificate under section 9 of this act.

29 (3) The amount of tax, until paid by the subscriber to the local  
30 exchange company or to the department, constitutes a debt from the  
31 subscriber to the local exchange company. Any local exchange company  
32 that fails or refuses to collect telephone program excise taxes as  
33 required with intent to violate the provisions of this chapter or to  
34 gain some advantage or benefit, either direct or indirect, and any  
35 subscriber who refuses to pay any telephone excise tax is guilty of a  
36 misdemeanor.

1 (4) If a subscriber has failed to pay to the local exchange company  
2 the telephone program excise taxes and the local exchange company has  
3 not paid the amount of the tax to the department, the department may,  
4 in its discretion, proceed directly against the subscriber for  
5 collection of the tax, in which case a penalty of ten percent may be  
6 added to the amount of the tax for failure of the subscriber to pay the  
7 tax to the local exchange company, regardless of when the tax is  
8 collected by the department. Telephone program excise taxes are due as  
9 provided under section 7 of this act.

10 NEW SECTION. **Sec. 7.** (1) The department shall administer and  
11 shall adopt rules necessary to enforce and administer the collection of  
12 telephone program excise taxes. Chapter 82.32 RCW, with the exception  
13 of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the  
14 administration, collection, and enforcement of telephone program excise  
15 taxes.

16 (2) Telephone program excise taxes, along with reports and returns  
17 on forms prescribed by the department, are due at the same time the  
18 taxpayer reports other taxes under RCW 82.32.045. If no other taxes  
19 are reported under RCW 82.32.045, the taxpayer shall remit telephone  
20 program excise taxes on an annual basis in accordance with RCW  
21 82.32.045.

22 (3) The department may relieve any taxpayer or class of taxpayers  
23 from the obligation of remitting monthly and may require the return to  
24 cover other longer reporting periods, but in no event may returns be  
25 filed for a period greater than one year.

26 (4) Telephone program excise taxes are in addition to any taxes  
27 imposed upon the same persons under chapters 82.08, 82.12, and 82.14B  
28 RCW.

29 NEW SECTION. **Sec. 8.** (1) A local exchange company shall file tax  
30 returns on a cash receipts or accrual basis according to which method  
31 of accounting is regularly employed in keeping the books of the  
32 company. A local exchange company filing returns on a cash receipts  
33 basis is not required to pay telephone program excise taxes on debts  
34 that are deductible as worthless for federal income tax purposes.

35 (2) A local exchange company is entitled to a credit or refund for

1 telephone program excise taxes previously paid on debts that are  
2 deductible as worthless for federal income tax purposes.

3 NEW SECTION. **Sec. 9.** (1) Unless a local exchange company has  
4 taken from the buyer a resale certificate or equivalent document under  
5 RCW 82.04.470, the burden of proving that a sale of the use of a  
6 switched access line was not a sale to a subscriber is upon the person  
7 who made the sale.

8 (2) If a local exchange company does not receive a resale  
9 certificate at the time of the sale, have a resale certificate on file  
10 at the time of the sale, or obtain a resale certificate from the buyer  
11 within a reasonable time after the sale, the local exchange company  
12 remains liable for the telephone program excise taxes as provided in  
13 section 6 of this act, unless the local exchange company can  
14 demonstrate facts and circumstances according to rules adopted by the  
15 department that show the sale was properly made without payment of  
16 telephone program excise taxes.

17 (3) The penalty imposed by RCW 82.32.291 may not be assessed on  
18 telephone program excise taxes that are due but not paid as a result of  
19 the improper use of a resale certificate. This subsection does not  
20 prohibit or restrict the application of other penalties authorized by  
21 law.

22 NEW SECTION. **Sec. 10.** (1) Upon termination, dissolution, or  
23 abandonment of a corporate or limited liability company business, any  
24 officer, member, manager, or other person having control or supervision  
25 of tax funds collected and held in trust under section 6 of this act,  
26 or who is charged with the responsibility for the filing of returns or  
27 the payment of tax funds collected and held in trust under section 6 of  
28 this act, is personally liable for any unpaid taxes and interest and  
29 penalties on those taxes, if the officer or other person willfully  
30 fails to pay or to cause to be paid any taxes due from the corporation  
31 under this section. For the purposes of this section, any taxes that  
32 have been paid, but not collected, are deductible from the taxes  
33 collected but not paid. For purposes of this subsection "willfully  
34 fails to pay or to cause to be paid" means that the failure was the  
35 result of an intentional, conscious, and voluntary course of action.



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

6 (3) Persons liable under subsection (1) of this section are exempt  
7 from liability if nonpayment of the tax funds held in trust is due to  
8 reasons beyond their control as determined by the department by rule.

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

12 (5) This section applies only if the department has determined that  
13 there is no reasonable means of collecting the tax funds held in trust  
14 directly from the corporation.

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

18 NEW SECTION. **Sec. 11.** Unless otherwise stated in this chapter,  
19 the collection authority and procedures prescribed in chapter 82.32 RCW  
20 apply to collections under this section.

21 NEW SECTION. **Sec. 12.** Sections 3 through 11 of this act  
22 constitute a new chapter in Title 82 RCW.

23 NEW SECTION. **Sec. 13.** (1) The department of revenue is  
24 responsible for the administration and collection of telephone program  
25 excise taxes as provided in this act only with regard to telephone  
26 program excise taxes that are imposed on switched access lines for any  
27 time period occurring on or after the effective date of this act.

28 (2) The department of social and health services is responsible for  
29 the administration and collection of telephone program excise taxes as  
30 provided in this act only with regard to telephone program excise taxes  
31 that are imposed on switched access lines for the current year and the  
32 four preceding years which occurred prior to the effective date of this  
33 act.

34 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2004.

1        NEW SECTION.    **Sec. 15.**    The secretary of the department of social  
2    and health services and the director of the department of revenue may  
3    take the necessary steps to ensure that this act is implemented on its  
4    effective date.

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