

CERTIFICATION OF ENROLLMENT

SENATE BILL 6448

Chapter 254, Laws of 2004

58th Legislature
2004 Regular Session

TELEPHONE PROGRAM EXCISE TAXES

EFFECTIVE DATE: 7/1/04

Passed by the Senate March 10, 2004
YEAS 47 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 10, 2004
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6448** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

Approved March 31, 2004.

FILED

March 31, 2004 - 3:01 p.m.

GARY F. LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6448

Passed Legislature - 2004 Regular Session

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 1st 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))~~ 1st. 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.

 Passed by the Senate March 10, 2004.

 Passed by the House March 10, 2004.

 Approved by the Governor March 31, 2004.

 Filed in Office of Secretary of State March 31, 2004.