



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB3175

Introduced 2/27/2006, by Sen. Steven J. Rauschenberger

SYNOPSIS AS INTRODUCED:

35 ILCS 630/1	from Ch. 120, par. 2001
35 ILCS 630/1.5 new	
35 ILCS 630/2	from Ch. 120, par. 2002
35 ILCS 630/3	from Ch. 120, par. 2003
35 ILCS 630/4	from Ch. 120, par. 2004
35 ILCS 630/4.3 new	
35 ILCS 630/5	from Ch. 120, par. 2005
35 ILCS 630/6	from Ch. 120, par. 2006
35 ILCS 630/8	from Ch. 120, par. 2008
35 ILCS 630/8.5 new	
35 ILCS 630/9	from Ch. 120, par. 2009
35 ILCS 630/9.5 new	
35 ILCS 630/10	from Ch. 120, par. 2010
35 ILCS 630/20	from Ch. 120, par. 2020
35 ILCS 635/15	
35 ILCS 636/5-5	
35 ILCS 636/5-10	

Amends the Telecommunications Excise Tax Act. Changes the short title of the Act to the Telecommunications and Video Entertainment Excise Tax Act. Deletes a provision that the tax proceeds must be used for general revenue and education purposes. Imposes the excise tax on video entertainment. Provides that the rate of tax under the Act is the combined sales tax rate for general merchandise in each local jurisdiction, as published in the Department of Revenue's sales tax reference manual. Creates a credit for video entertainment providers equal to the amount of municipal franchise fees. Provides that certain waiver provisions set forth in the Simplified Municipal Telecommunications Tax Act apply to this Act. Amends the Telecommunications Infrastructure maintenance Fee Act. Repeals a Section concerning the imposition of telecommunications infrastructure maintenance fees. Amends the Simplified Municipal Telecommunications Tax Act. Repeals a Section authorizing municipalities to impose a tax on certain acts or privileges. Effective January 1, 2007.

LRB094 19785 BDD 56558 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Telecommunications Excise Tax Act is amended
5 by changing Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, and 20 and by
6 adding Sections 1.5, 4.3, 8.5, and 9.5 as follows:

7 (35 ILCS 630/1) (from Ch. 120, par. 2001)

8 Sec. 1. This Article shall be known and may be cited as the
9 "Telecommunications and Video Entertainment Excise Tax Act".
10 ~~The net proceeds from the taxes imposed by this Act shall be~~
11 ~~used for the support of the General Revenue Fund and education.~~

12 (Source: P.A. 84-126.)

13 (35 ILCS 630/1.5 new)

14 Sec. 1.5. Legislative intent.

15 (a) The General Assembly has authorized the State and
16 corporate authorities of municipalities to impose various fees
17 and taxes on the privilege of originating or receiving
18 telecommunications and on retailers engaged in the business of
19 transmitting such telecommunications. This has resulted in a
20 heavy tax burden which, in many cases, exceeds the tax rate
21 levied on general merchandise. Additionally, the competitive
22 environment of telecommunications and video is changing
23 rapidly. Traditional video providers are now offering
24 telecommunications and traditional telecommunications
25 providers are now offering video services. Under the current
26 tax system, video and telecommunications have varying tax
27 burdens. Therefore, the General Assembly is repealing the
28 simplified municipal telecommunications tax and the State
29 infrastructure maintenance fee and is enacting the State
30 telecommunications and video entertainment excise tax.

31 (b) The enactment of this amendatory Act of the 94th

1 General Assembly and the repeal of the simplified municipal
2 telecommunications tax does not give municipalities the
3 authority to levy new fees, charges, or other compensation for
4 the use of the public right-of-way by telecommunications
5 retailers. The waiver of franchise fees under Section 5-60 of
6 the Simplified Municipal Telecommunications Tax Act shall
7 carry forward to this Act even though the simplified municipal
8 telecommunications tax is repealed. Additionally, the
9 legislative intent in Section 5 of the Telecommunications
10 Infrastructure Maintenance Fee Act with regard to franchise
11 fees should be read in concert with the legislative intent
12 found in Section 5-5 of the Simplified Municipal
13 Telecommunications Tax Act with regard to the simplified
14 municipal telecommunications tax.

15 (35 ILCS 630/2) (from Ch. 120, par. 2002)

16 Sec. 2. As used in this Article, unless the context clearly
17 requires otherwise:

18 (a) "Gross charge" means the amount paid for the act or
19 privilege of originating or receiving telecommunications or
20 video entertainment in this State and for all services and
21 equipment provided in connection therewith by a retailer,
22 valued in money whether paid in money or otherwise, including
23 cash, credits, services and property of every kind or nature,
24 and shall be determined without any deduction on account of the
25 cost of such telecommunications or video entertainment, the
26 cost of materials used, labor or service costs or any other
27 expense whatsoever. In case credit is extended, the amount
28 thereof shall be included only as and when paid. "Gross
29 charges" for private line service shall include charges imposed
30 at each channel termination point within this State, charges
31 for the channel mileage between each channel termination point
32 within this State, and charges for that portion of the
33 interstate inter-office channel provided within Illinois.
34 Charges for that portion of the interstate inter-office channel
35 provided in Illinois shall be determined by the retailer as

1 follows: (i) for interstate inter-office channels having 2
2 channel termination points, only one of which is in Illinois,
3 50% of the total charge imposed; or (ii) for interstate
4 inter-office channels having more than 2 channel termination
5 points, one or more of which are in Illinois, an amount equal
6 to the total charge multiplied by a fraction, the numerator of
7 which is the number of channel termination points within
8 Illinois and the denominator of which is the total number of
9 channel termination points. Prior to January 1, 2004, any
10 method consistent with this paragraph or other method that
11 reasonably apportions the total charges for interstate
12 inter-office channels among the states in which channel
13 terminations points are located shall be accepted as a
14 reasonable method to determine the charges for that portion of
15 the interstate inter-office channel provided within Illinois
16 for that period. However, "gross charges" shall not include any
17 of the following:

18 (1) Any amounts added to a purchaser's bill because of
19 a charge made pursuant to (i) the tax imposed by this
20 Article; (ii) charges added to customers' bills pursuant to
21 the provisions of Sections 9-221 or 9-222 of the Public
22 Utilities Act, as amended, or any similar charges added to
23 customers' bills by retailers who are not subject to rate
24 regulation by the Illinois Commerce Commission for the
25 purpose of recovering any of the tax liabilities or other
26 amounts specified in such provisions of such Act; (iii) the
27 tax imposed by Section 4251 of the Internal Revenue Code;
28 (iv) 911 surcharges; or (v) the tax imposed by the
29 Simplified Municipal Telecommunications Tax Act.

30 (2) Charges for a sent collect telecommunication
31 received outside of the State.

32 (3) Charges for leased time on equipment or charges for
33 the storage of data or information for subsequent retrieval
34 or the processing of data or information intended to change
35 its form or content. Such equipment includes, but is not
36 limited to, the use of calculators, computers, data

1 processing equipment, tabulating equipment or accounting
2 equipment and also includes the usage of computers under a
3 time-sharing agreement.

4 (4) Charges for customer equipment, including such
5 equipment that is leased or rented by the customer from any
6 source, wherein such charges are disaggregated and
7 separately identified from other charges.

8 (5) Charges to business enterprises certified under
9 Section 9-222.1 of the Public Utilities Act, as amended, to
10 the extent of such exemption and during the period of time
11 specified by the Department of Commerce and Economic
12 Opportunity Community Affairs.

13 (6) Charges for telecommunications and video
14 entertainment and all services and equipment provided in
15 connection therewith between a parent corporation and its
16 wholly owned subsidiaries or between wholly owned
17 subsidiaries when the tax imposed under this Article has
18 already been paid to a retailer and only to the extent that
19 the charges between the parent corporation and wholly owned
20 subsidiaries or between wholly owned subsidiaries
21 represent expense allocation between the corporations and
22 not the generation of profit for the corporation rendering
23 such service.

24 (7) Bad debts. Bad debt means any portion of a debt
25 that is related to a sale at retail for which gross charges
26 are not otherwise deductible or excludable that has become
27 worthless or uncollectable, as determined under applicable
28 federal income tax standards. If the portion of the debt
29 deemed to be bad is subsequently paid, the retailer shall
30 report and pay the tax on that portion during the reporting
31 period in which the payment is made.

32 (8) Charges paid by inserting coins in coin-operated
33 telecommunication devices.

34 (9) Amounts paid by telecommunications retailers under
35 the Telecommunications Municipal Infrastructure
36 Maintenance Fee Act.

1 (10) Charges for nontaxable services or
2 telecommunications if (i) those charges are aggregated
3 with other charges for telecommunications that are
4 taxable, (ii) those charges are not separately stated on
5 the customer bill or invoice, and (iii) the retailer can
6 reasonably identify the nontaxable charges on the
7 retailer's books and records kept in the regular course of
8 business. If the nontaxable charges cannot reasonably be
9 identified, the gross charge from the sale of both taxable
10 and nontaxable services or telecommunications billed on a
11 combined basis shall be attributed to the taxable services
12 or telecommunications. The burden of proving nontaxable
13 charges shall be on the retailer of the telecommunications.

14 (b) "Amount paid" means the amount charged to the
15 taxpayer's service address in this State regardless of where
16 such amount is billed or paid.

17 (c) "Telecommunications", in addition to the meaning
18 ordinarily and popularly ascribed to it, includes, without
19 limitation, messages or information transmitted through use of
20 local, toll and wide area telephone service; private line
21 services; channel services; telegraph services;
22 teletypewriter; computer exchange services; cellular mobile
23 telecommunications service; specialized mobile radio;
24 stationary two way radio; paging service; or any other form of
25 mobile and portable one-way or two-way communications; or any
26 other transmission of messages or information by electronic or
27 similar means, between or among points by wire, cable,
28 fiber-optics, laser, microwave, radio, satellite or similar
29 facilities. As used in this Act, "private line" means a
30 dedicated non-traffic sensitive service for a single customer,
31 that entitles the customer to exclusive or priority use of a
32 communications channel or group of channels, from one or more
33 specified locations to one or more other specified locations.
34 The definition of "telecommunications" shall not include value
35 added services in which computer processing applications are
36 used to act on the form, content, code and protocol of the

1 information for purposes other than transmission.
2 "Telecommunications" shall not include purchases of
3 telecommunications by a telecommunications service provider
4 for use as a component part of the service provided by him to
5 the ultimate retail consumer who originates or terminates the
6 taxable end-to-end communications. Carrier access charges,
7 right of access charges, charges for use of inter-company
8 facilities, and all telecommunications resold in the
9 subsequent provision of, used as a component of, or integrated
10 into end-to-end telecommunications service shall be
11 non-taxable as sales for resale.

12 (d) "Interstate telecommunications" means all
13 telecommunications that either originate or terminate outside
14 this State.

15 (e) "Intrastate telecommunications" means all
16 telecommunications that originate and terminate within this
17 State.

18 (f) "Department" means the Department of Revenue of the
19 State of Illinois.

20 (g) "Director" means the Director of Revenue for the
21 Department of Revenue of the State of Illinois.

22 (h) "Taxpayer" means a person who individually or through
23 his agents, employees or permittees engages in the act or
24 privilege of originating or receiving telecommunications in
25 this State and who incurs a tax liability under this Article.

26 (i) "Person" means any natural individual, firm, trust,
27 estate, partnership, association, joint stock company, joint
28 venture, corporation, limited liability company, or a
29 receiver, trustee, guardian or other representative appointed
30 by order of any court, the Federal and State governments,
31 including State universities created by statute or any city,
32 town, county or other political subdivision of this State.

33 (j) "Purchase at retail" means the acquisition,
34 consumption or use of telecommunication through a sale at
35 retail.

36 (k) "Sale at retail" means the transmitting, supplying or

1 furnishing of telecommunications or video entertainment and
2 all services and equipment provided in connection therewith for
3 a consideration to persons other than the Federal and State
4 governments, and State universities created by statute and
5 other than between a parent corporation and its wholly owned
6 subsidiaries or between wholly owned subsidiaries for their use
7 or consumption and not for resale.

8 (l) "Retailer" means and includes every person engaged in
9 the business of making sales at retail as defined in this
10 Article. The Department may, in its discretion, upon
11 application, authorize the collection of the tax hereby imposed
12 by any retailer not maintaining a place of business within this
13 State, who, to the satisfaction of the Department, furnishes
14 adequate security to insure collection and payment of the tax.
15 Such retailer shall be issued, without charge, a permit to
16 collect such tax. When so authorized, it shall be the duty of
17 such retailer to collect the tax upon all of the gross charges
18 for telecommunications or video entertainment in this State in
19 the same manner and subject to the same requirements as a
20 retailer maintaining a place of business within this State. The
21 permit may be revoked by the Department at its discretion.

22 (m) "Retailer maintaining a place of business in this
23 State", or any like term, means and includes any retailer
24 having or maintaining within this State, directly or by a
25 subsidiary, an office, distribution facilities, transmission
26 facilities, sales office, warehouse or other place of business,
27 or any agent or other representative operating within this
28 State under the authority of the retailer or its subsidiary,
29 irrespective of whether such place of business or agent or
30 other representative is located here permanently or
31 temporarily, or whether such retailer or subsidiary is licensed
32 to do business in this State.

33 (n) "Service address" means the location of
34 telecommunications or video entertainment equipment from which
35 the ~~telecommunications~~ services are originated or at which
36 telecommunications or video entertainment services are

1 received by a taxpayer. In the event this may not be a defined
2 location, as in the case of mobile phones, paging systems, and
3 maritime systems, service address means the customer's place of
4 primary use as defined in the Mobile Telecommunications
5 Sourcing Conformity Act. For air-to-ground systems and the
6 like, service address shall mean the location of a taxpayer's
7 primary use of the telecommunications equipment as defined by
8 telephone number, authorization code, or location in Illinois
9 where bills are sent.

10 (o) "Prepaid telephone calling arrangements" mean the
11 right to exclusively purchase telephone or telecommunications
12 services that must be paid for in advance and enable the
13 origination of one or more intrastate, interstate, or
14 international telephone calls or other telecommunications
15 using an access number, an authorization code, or both, whether
16 manually or electronically dialed, for which payment to a
17 retailer must be made in advance, provided that, unless
18 recharged, no further service is provided once that prepaid
19 amount of service has been consumed. Prepaid telephone calling
20 arrangements include the recharge of a prepaid calling
21 arrangement. For purposes of this subsection, "recharge" means
22 the purchase of additional prepaid telephone or
23 telecommunications services whether or not the purchaser
24 acquires a different access number or authorization code.
25 "Prepaid telephone calling arrangement" does not include an
26 arrangement whereby a customer purchases a payment card and
27 pursuant to which the service provider reflects the amount of
28 such purchase as a credit on an invoice issued to that customer
29 under an existing subscription plan.

30 (p) "Video entertainment" means providing a video service,
31 for a fee, which regularly amplifies and transmits by wire,
32 coaxial cable, lightwave, or microwave, to 50 or more
33 subscribers, programs broadcast by television or radio
34 stations or originated by themselves or any other party. "Video
35 entertainment" does not include a master antenna system which
36 serves one residential, commercial, or government building or

1 complex of buildings under common ownership or control if that
2 facility does not provide any broadcast signals other than
3 those which may be viewed in that facility.

4 (Source: P.A. 92-474, eff. 8-1-02; 92-526, eff. 1-1-03; 92-878,
5 eff. 1-1-04; 93-286, 1-1-04; revised 12-6-03.)

6 (35 ILCS 630/3) (from Ch. 120, par. 2003)

7 Sec. 3. Until December 31, 1997, a tax is imposed upon the
8 act or privilege of originating or receiving intrastate
9 telecommunications by a person in this State at the rate of 5%
10 of the gross charge for such telecommunications purchased at
11 retail from a retailer by such person. Beginning January 1,
12 1998, a tax is imposed upon the act or privilege of originating
13 in this State or receiving in this State intrastate
14 telecommunications by a person in this State at the rate of 7%
15 of the gross charge for such telecommunications purchased at
16 retail from a retailer by such person. However, such tax is not
17 imposed on the act or privilege to the extent such act or
18 privilege may not, under the Constitution and statutes of the
19 United States, be made the subject of taxation by the State.
20 Beginning January 1, 2001, prepaid telephone calling
21 arrangements shall not be considered telecommunications
22 subject to the tax imposed under this Act. Beginning January 1,
23 2007, the tax imposed by this Section shall be levied at the
24 rate determined in Section 4.3 and shall also be levied on
25 intrastate video entertainment.

26 (Source: P.A. 90-548, eff. 12-4-97; 91-870, eff. 6-22-00.)

27 (35 ILCS 630/4) (from Ch. 120, par. 2004)

28 Sec. 4. Until December 31, 1997, a tax is imposed upon the
29 act or privilege of originating in this State or receiving in
30 this State interstate telecommunications by a person in this
31 State at the rate of 5% of the gross charge for such
32 telecommunications purchased at retail from a retailer by such
33 person. Beginning January 1, 1998, a tax is imposed upon the
34 act or privilege of originating in this State or receiving in

1 this State interstate telecommunications by a person in this
2 State at the rate of 7% of the gross charge for such
3 telecommunications purchased at retail from a retailer by such
4 person. To prevent actual multi-state taxation of the act or
5 privilege that is subject to taxation under this paragraph, any
6 taxpayer, upon proof that that taxpayer has paid a tax in
7 another state on such event, shall be allowed a credit against
8 the tax imposed in this Section 4 to the extent of the amount
9 of such tax properly due and paid in such other state. However,
10 such tax is not imposed on the act or privilege to the extent
11 such act or privilege may not, under the Constitution and
12 statutes of the United States, be made the subject of taxation
13 by the State. Beginning on January 1, 2001, prepaid telephone
14 calling arrangements shall not be considered
15 telecommunications subject to the tax imposed under this Act.
16 Beginning January 1, 2007, the tax imposed by this Section
17 shall be levied at the rate determined in Section 4.3 and shall
18 also be levied on intrastate video entertainment.

19 (Source: P.A. 90-548, eff. 12-4-97; 91-870, eff. 6-22-00.)

20 (35 ILCS 630/4.3 new)

21 Sec. 4.3. Beginning January 1, 2007, the tax rate imposed
22 in Sections 3 and 4 shall be the combined sales tax rate for
23 general merchandise in each local jurisdiction, as published in
24 the Department's sales tax reference manual.

25 (35 ILCS 630/5) (from Ch. 120, par. 2005)

26 Sec. 5. Any retailer maintaining a place of business in
27 this State shall collect and remit to the Department the tax
28 imposed by this Act. Any such retailer shall be liable for the
29 tax whether or not the tax has been collected by the retailer.
30 To the extent that a retailer required to collect the tax
31 imposed by this Act has actually collected that tax, such tax
32 is held in trust for the benefit of the Department. Retailers
33 shall collect the tax from the taxpayer by adding the tax to
34 the gross charge for the act or privilege of originating or

1 receiving telecommunications or video entertainment in this
2 State, when sold for use, in the manner prescribed by the
3 Department. Whenever possible, the tax imposed by this Article
4 shall, when collected, be stated as a distinct item separate
5 and apart from the gross charge for telecommunications or video
6 entertainment. The tax imposed by this Article shall constitute
7 a debt of the purchaser to the retailer who provides such
8 taxable services until paid, and, if unpaid, is recoverable at
9 law in the same manner as the original charge for such taxable
10 services.

11 (Source: P.A. 91-203, eff. 7-20-99.)

12 (35 ILCS 630/6) (from Ch. 120, par. 2006)

13 Sec. 6. Returns and payments of tax. Except as provided
14 hereinafter in this Section, on or before the last day of each
15 month, each retailer maintaining a place of business in this
16 State shall make a return to the Department for the preceding
17 calendar month, stating:

18 1. His name;

19 2. The address of his principal place of business, or
20 the address of the principal place of business (if that is
21 a different address) from which he engages in the business
22 of transmitting telecommunications or video entertainment;

23 3. Total amount of gross charges billed by him during
24 the preceding calendar month for providing
25 telecommunications or video entertainment during such
26 calendar month;

27 4. Total amount received by him during the preceding
28 calendar month on credit extended;

29 5. Deductions allowed by law;

30 6. Gross charges which were billed by him during the
31 preceding calendar month and upon the basis of which the
32 tax is imposed;

33 7. Amount of tax (computed upon Item 6) and credits to
34 tax;

35 8. Such other reasonable information as the Department

1 may require.

2 Any taxpayer required to make payments under this Section
3 may make the payments by electronic funds transfer. The
4 Department shall adopt rules necessary to effectuate a program
5 of electronic funds transfer. Any taxpayer who has average
6 monthly tax billings due to the Department under this Act and
7 the Simplified Municipal Telecommunications Tax Act that
8 exceed \$1,000 shall make all payments by electronic funds
9 transfer as required by rules of the Department and shall file
10 the return required by this Section by electronic means as
11 required by rules of the Department.

12 If the retailer's average monthly tax billings due to the
13 Department under this Act and the Simplified Municipal
14 Telecommunications Tax Act do not exceed \$1,000, the Department
15 may authorize his returns to be filed on a quarter annual
16 basis, with the return for January, February and March of a
17 given year being due by April 30 of such year; with the return
18 for April, May and June of a given year being due by July 31st
19 of such year; with the return for July, August and September of
20 a given year being due by October 31st of such year; and with
21 the return of October, November and December of a given year
22 being due by January 31st of the following year.

23 If the retailer is otherwise required to file a monthly or
24 quarterly return and if the retailer's average monthly tax
25 billings due to the Department under this Act and the
26 Simplified Municipal Telecommunications Tax Act do not exceed
27 \$400, the Department may authorize his or her return to be
28 filed on an annual basis, with the return for a given year
29 being due by January 31st of the following year.

30 Notwithstanding any other provision of this Article
31 containing the time within which a retailer may file his
32 return, in the case of any retailer who ceases to engage in a
33 kind of business which makes him responsible for filing returns
34 under this Article, such retailer shall file a final return
35 under this Article with the Department not more than one month
36 after discontinuing such business.

1 In making such return, the retailer shall determine the
2 value of any consideration other than money received by him and
3 he shall include such value in his return. Such determination
4 shall be subject to review and revision by the Department in
5 the manner hereinafter provided for the correction of returns.

6 Each retailer whose average monthly liability to the
7 Department under this Article and the Simplified Municipal
8 Telecommunications Tax Act was \$25,000 or more during the
9 preceding calendar year, excluding the month of highest
10 liability and the month of lowest liability in such calendar
11 year, and who is not operated by a unit of local government,
12 shall make estimated payments to the Department on or before
13 the 7th, 15th, 22nd and last day of the month during which tax
14 collection liability to the Department is incurred in an amount
15 not less than the lower of either 22.5% of the retailer's
16 actual tax collections for the month or 25% of the retailer's
17 actual tax collections for the same calendar month of the
18 preceding year. The amount of such quarter monthly payments
19 shall be credited against the final liability of the retailer's
20 return for that month. Any outstanding credit, approved by the
21 Department, arising from the retailer's overpayment of its
22 final liability for any month may be applied to reduce the
23 amount of any subsequent quarter monthly payment or credited
24 against the final liability of the retailer's return for any
25 subsequent month. If any quarter monthly payment is not paid at
26 the time or in the amount required by this Section, the
27 retailer shall be liable for penalty and interest on the
28 difference between the minimum amount due as a payment and the
29 amount of such payment actually and timely paid, except insofar
30 as the retailer has previously made payments for that month to
31 the Department in excess of the minimum payments previously
32 due.

33 The retailer making the return herein provided for shall,
34 at the time of making such return, pay to the Department the
35 amount of tax herein imposed, less a discount of 1% which is
36 allowed to reimburse the retailer for the expenses incurred in

1 keeping records, billing the customer, preparing and filing
2 returns, remitting the tax, and supplying data to the
3 Department upon request. No discount may be claimed by a
4 retailer on returns not timely filed and for taxes not timely
5 remitted. On and after the effective date of this Article of
6 1985, \$1,000,000 of the moneys received by the Department of
7 Revenue pursuant to this Article shall be paid each month into
8 the Common School Fund and the remainder into the General
9 Revenue Fund. On and after February 1, 1998, however, of the
10 moneys received by the Department of Revenue pursuant to the
11 additional taxes imposed by this amendatory Act of 1997
12 one-half shall be deposited into the School Infrastructure Fund
13 and one-half shall be deposited into the Common School Fund. On
14 and after the effective date of this amendatory Act of the 91st
15 General Assembly, if in any fiscal year the total of the moneys
16 deposited into the School Infrastructure Fund under this Act is
17 less than the total of the moneys deposited into that Fund from
18 the additional taxes imposed by Public Act 90-548 during fiscal
19 year 1999, then, as soon as possible after the close of the
20 fiscal year, the Comptroller shall order transferred and the
21 Treasurer shall transfer from the General Revenue Fund to the
22 School Infrastructure Fund an amount equal to the difference
23 between the fiscal year total deposits and the total amount
24 deposited into the Fund in fiscal year 1999.

25 (Source: P.A. 91-541, eff. 8-13-99; 91-870, 6-22-00; 92-526,
26 eff. 1-1-03.)

27 (35 ILCS 630/8) (from Ch. 120, par. 2008)

28 Sec. 8. Resellers of telecommunications or video
29 entertainment; resale number. If a person who originates or
30 receives telecommunications or video entertainment in this
31 State claims to be a reseller of such telecommunications or
32 video entertainment, such person shall apply to the Department
33 for a resale number. Such applicant shall state facts which
34 will show the Department why such applicant is not liable for
35 tax under this Article on any of his purchases and shall

1 furnish such additional information as the Department may
2 reasonably require.

3 Upon approval of the application, the Department shall
4 assign a resale number to the applicant and shall certify such
5 number to him. The Department may cancel any such number which
6 is obtained through misrepresentation, or which is used to
7 originate or receive such telecommunications or video
8 entertainment tax-free when such actions in fact are not for
9 resale, or which no longer applies because of the person's
10 having discontinued the making of resales.

11 Except as provided hereinabove in this Section, the act or
12 privilege of originating or receiving telecommunications or
13 video entertainment in this State shall not be made tax-free on
14 the ground of being a sale for resale unless the person has an
15 active resale number from the Department and furnishes that
16 number to the retailer in connection with certifying to the
17 retailer that any sale to such person is nontaxable because of
18 being a sale for resale.

19 (Source: P.A. 84-126.)

20 (35 ILCS 630/8.5 new)

21 Sec. 8.5. Credit for local franchise fees. A video
22 entertainment provider that owes municipal franchise fees for
23 providing video entertainment may take a credit against the tax
24 imposed by this Act. The credit shall be equal to the sum total
25 of all franchise fees owed throughout the State and shall be
26 credited against the liability under this Act for the tax
27 period covered by the return.

28 (35 ILCS 630/9) (from Ch. 120, par. 2009)

29 Sec. 9. All of the provisions of Sections 4, 5, 5a, 5b, 5c,
30 5d, 5e, 5f, 5g, 5i, 5j, 6b, and 6c of the Retailers' Occupation
31 Tax Act, which are not inconsistent with this Act, and Section
32 3-7 of the Uniform Penalty and Interest Act, shall apply, as
33 far as practicable, to the subject matter of this Act to the
34 same extent as if such provisions were included herein.

1 References in such incorporated Sections of the Retailers'
2 Occupation Tax Act to retailers, to sellers or to persons
3 engaged in the business of selling tangible personal property
4 mean retailers, as defined in this Article, or persons engaged
5 in the act or privilege of originating or receiving
6 telecommunications or video entertainment. References in such
7 incorporated Sections of the Retailers' Occupation Tax Act to
8 purchasers of tangible personal property mean purchasers of
9 telecommunications or video entertainment as defined in this
10 Article. References in such incorporated Sections of the
11 Retailers' Occupation Tax Act to sales of tangible personal
12 property mean the act or privilege of originating or receiving
13 telecommunications or video entertainment as defined in this
14 Article.

15 (Source: P.A. 90-491, eff. 1-1-98.)

16 (35 ILCS 630/9.5 new)

17 Sec. 9.5. Waivers. The waiver provisions of Section 5-60 of
18 the Simplified Municipal Telecommunications Tax Act apply to
19 telecommunication providers under this Act and the intent
20 provided in Section 5 of the Telecommunications Infrastructure
21 Maintenance Fee Act shall apply to this Act as if such
22 provisions were included herein.

23 (35 ILCS 630/10) (from Ch. 120, par. 2010)

24 Sec. 10. If it shall appear that an amount of tax or
25 penalty or interest has been paid in error hereunder to the
26 Department by a taxpayer, as distinguished from the retailer,
27 whether such amount be paid through a mistake of fact or an
28 error of law, such taxpayer may file a claim for credit or
29 refund with the Department. If it shall appear that an amount
30 of tax or penalty or interest has been paid in error to the
31 Department hereunder by a retailer who is required or
32 authorized to collect and remit the tax imposed by this
33 Article, whether such amount be paid through a mistake of fact
34 or an error of law, such retailer may file a claim for credit

1 or refund with the Department, provided that no credit or
2 refund shall be allowed for any amount paid by any such
3 retailer unless it shall appear that he bore the burden of such
4 amount and did not shift the burden thereof to anyone else, or
5 unless it shall appear that he or she or his or her legal
6 representative has unconditionally repaid such amount to his
7 customer (1) who bore the burden thereof and has not shifted
8 such burden directly or indirectly in any manner whatsoever; or
9 (2) who, if he or she shifted such burden, has repaid
10 unconditionally such amount to his or her own customer; and (3)
11 who is not entitled to receive any reimbursement therefor from
12 any other source than from his retailer, nor to be relieved of
13 such burden in any other manner whatsoever.

14 If it is determined that the Department should issue a
15 credit or refund under this Article, the Department may first
16 apply the amount thereof against any amount of tax or penalty
17 or interest due hereunder from the person entitled to such
18 credit or refund. For this purpose, if proceedings are pending
19 to determine whether or not any tax or penalty or interest is
20 due under this Article from such person, the Department may
21 withhold issuance of the credit or refund pending the final
22 disposition of such proceedings and may apply such credit or
23 refund against any amount found to be due to the Department as
24 a result of such proceedings. The balance, if any, of the
25 credit or refund shall be issued to the person entitled
26 thereto.

27 If no tax or penalty or interest is due and no proceeding
28 is pending to determine whether such person is indebted to the
29 Department for tax or penalty or interest, the credit
30 memorandum or refund shall be issued to the claimant; or (in
31 the case of a credit memorandum) the credit memorandum may be
32 assigned and set over by the lawful holder thereof, subject to
33 reasonable rules of the Department, to any other person who is
34 subject to this Article, and the amount thereof shall be
35 applied by the Department against any tax or penalty or
36 interest due or to become due under this Article from such

1 assignee.

2 As to any claim for credit or refund filed with the
3 Department on or after each January 1 and July 1, no amounts
4 erroneously paid more than three years prior to such January 1
5 and July 1, respectively, shall be credited or refunded, except
6 that if both the Department and the taxpayer have agreed to an
7 extension of time to issue a notice of tax liability under this
8 Act, the claim may be filed at any time prior to the expiration
9 of the period agreed upon.

10 Claims for credit or refund shall be filed upon forms
11 provided by the Department. As soon as practicable after any
12 claim for credit or refund is filed, the Department shall
13 examine the same and determine the amount of credit or refund
14 to which the claimant is entitled and shall notify the claimant
15 of such determination, which amount shall be prima facie
16 correct.

17 A claim for credit or refund shall be considered to have
18 been filed with the Department on the date upon which it is
19 received by the Department. Upon receipt of any claim for
20 credit or refund filed under this Article, any officer or
21 employee of the Department, authorized in writing by the
22 Director of Revenue to acknowledge receipt of such claims on
23 behalf of the Department, shall execute on behalf of the
24 Department, and shall deliver or mail to the claimant or his
25 duly authorized agent, a written receipt, acknowledging that
26 the claim has been filed with the Department, describing the
27 claim in sufficient detail to identify it and stating the date
28 upon which the claim was received by the Department. Such
29 written receipt shall be prima facie evidence that the
30 Department received the claim described in such receipt and
31 shall be prima facie evidence of the date when such claim was
32 received by the Department. In the absence of such a written
33 receipt, the records of the Department as to when the claim was
34 received by the Department, or as to whether or not the claim
35 was received at all by the Department, shall be deemed to be
36 prima facie correct upon these questions in the event of any

1 dispute between the claimant (or his or her legal
2 representative) and the Department concerning these questions.

3 Any credit or refund that is allowed under this Article
4 shall bear interest at the rate and in the manner specified in
5 the Uniform Penalty and Interest Act.

6 In case the Department determines that the claimant is
7 entitled to a refund, such refund shall be made only from such
8 appropriation as may be available for that purpose. If it
9 appears unlikely that the amount appropriated would permit
10 everyone having a claim allowed during the period covered by
11 such appropriation to elect to receive a cash refund, the
12 Department by rule or regulation shall provide for the payment
13 of refunds in hardship cases and shall define what types of
14 cases qualify as hardship cases.

15 If a retailer who has failed to pay tax on gross charges
16 for telecommunications or video entertainment is required by
17 the Department to pay such tax, such retailer, without filing
18 any formal claim with the Department, shall be allowed to take
19 credit against such tax liability to the extent, if any, to
20 which such retailer has paid the tax to its vendor of the
21 telecommunications or video entertainment which such retailer
22 purchased and used for resale, and no penalty or interest shall
23 be charged to such retailer on the amount of such credit.
24 However, when such credit is allowed to the retailer by the
25 Department, the vendor is precluded from refunding any of the
26 tax to the retailer and filing a claim for credit or refund
27 with respect thereto with the Department. The provisions of
28 this Section added by this amendatory Act of 1988 shall be
29 applied retroactively, regardless of the date of the
30 transaction.

31 (Source: P.A. 90-491, eff. 1-1-98.)

32 (35 ILCS 630/20) (from Ch. 120, par. 2020)

33 Sec. 20. Severability. If any clause, sentence, Section,
34 provision or part of this Article or the application thereof to
35 any person or circumstance, other than the applicability of the

1 Article to messages originating or terminating outside this
2 State, shall be adjudged to be unconstitutional, the remainder
3 of this Article or its application to persons or circumstances
4 other than those to which it is held invalid shall not be
5 affected thereby. In particular, if any provision which exempts
6 or has the effect of exempting some class of persons or some
7 act or privilege of sending or receiving telecommunication or
8 video entertainment from the tax imposed by this Article should
9 be held to constitute or to result in an invalid classification
10 or to be unconstitutional for some other reason, such provision
11 shall be deemed to be severable, with the remainder of this
12 Article, without said provision, being held constitutional.

13 (Source: P.A. 84-126.)

14 Section 10. The Telecommunications Infrastructure
15 Maintenance Fee Act is amended by changing Section 15 as
16 follows:

17 (35 ILCS 635/15)

18 Sec. 15. State telecommunications infrastructure
19 maintenance fees.

20 (a) A State infrastructure maintenance fee is hereby
21 imposed upon telecommunications retailers as a replacement for
22 the personal property tax in an amount specified in subsection
23 (b).

24 (b) The amount of the State infrastructure maintenance fee
25 imposed upon a telecommunications retailer under this Section
26 shall be equal to 0.5% of all gross charges charged by the
27 telecommunications retailer to service addresses in this State
28 for telecommunications, other than wireless
29 telecommunications, originating or received in this State.
30 However, the State infrastructure maintenance fee is not
31 imposed in any case in which the imposition of the fee would
32 violate the Constitution or statutes of the United States.

33 (c) (Blank).

34 (d) (Blank).

1 (e) The State infrastructure maintenance fee authorized by
2 this Section shall be collected, enforced, and administered as
3 set forth in subsection (b) of Section 25 of this Act.

4 (f) This Section is repealed on January 1, 2007.

5 (Source: P.A. 92-526, eff. 1-1-03.)

6 Section 15. The Simplified Municipal Telecommunications
7 Tax Act is amended by changing Sections 5-5 and 5-10 as
8 follows:

9 (35 ILCS 636/5-5)

10 Sec. 5-5. Legislative intent.

11 (a) The General Assembly has authorized the corporate
12 authorities of any municipality to impose various fees and
13 taxes on the privilege of originating or receiving
14 telecommunications, and on retailers engaged in the business of
15 transmitting such telecommunications, all of which are
16 remitted by such retailers directly to the imposing
17 municipality. To simplify the imposition and collection of
18 municipal telecommunications taxes and to reduce complication
19 and burden, the General Assembly is repealing the municipal
20 telecommunications tax, the municipal tax on the occupation or
21 privilege of transmitting messages, and the municipal
22 infrastructure maintenance fee, and is enacting this
23 Simplified Municipal Telecommunications Tax Act which provides
24 for a single municipally imposed telecommunications tax which,
25 for municipalities with populations of less than 500,000, will
26 be collected by the Illinois Department of Revenue, but which,
27 for municipalities of 500,000 or more, will continue to be
28 collected by such municipalities.

29 (b) This amendatory Act of the 94th General Assembly is
30 intended to end the imposition of the tax under this Act.

31 (Source: P.A. 92-526, eff. 7-1-02.)

32 (35 ILCS 636/5-10)

33 Sec. 5-10. Authority. The corporate authorities of any

1 municipality in this State may tax any and all of the following
2 acts or privileges:

3 (a) The act or privilege of originating in such
4 municipality or receiving in such municipality intrastate
5 telecommunications by a person. To prevent actual
6 multi-municipal taxation of the act or privilege that is
7 subject to taxation under this subsection, any taxpayer, upon
8 proof that the taxpayer has paid a tax in another municipality
9 on that event, shall be allowed a credit against any tax
10 enacted pursuant to or authorized by this Section to the extent
11 of the amount of the tax properly due and paid in the
12 municipality that was not previously allowed as a credit
13 against any other municipal tax. However, such tax is not
14 imposed on such act or privilege to the extent such act or
15 privilege may not, under the Constitution and statutes of the
16 United States, be made the subject of taxation by
17 municipalities in this State.

18 (b) The act or privilege of originating in such
19 municipality or receiving in such municipality interstate
20 telecommunications by a person. To prevent actual multi-state
21 or multi-municipal taxation of the act or privilege that is
22 subject to taxation under this subsection, any taxpayer, upon
23 proof that the taxpayer has paid a tax in another state or
24 municipality in this State on such event, shall be allowed a
25 credit against any tax enacted pursuant to or authorized by
26 this Section to the extent of the amount of such tax properly
27 due and paid in such other state or such tax properly due and
28 paid in a municipality in this State which was not previously
29 allowed as a credit against any other state or local tax in
30 this State. However, such tax is not imposed on the act or
31 privilege to the extent such act or privilege may not, under
32 the Constitution and statutes of the United States, be made the
33 subject of taxation by municipalities in this State.

34 (c) This Section is repealed January 1, 2007.

35 (Source: P.A. 92-526, eff. 7-1-02; 93-286, eff. 7-22-03.)

1 Section 99. Effective date. This Act takes effect January
2 1, 2007.