

**BOARD OF SUPERVISORS  
COUNTY OF NEW KENT  
VIRGINIA**

**O-10-05**

At the regular meeting of the Board of Supervisors of the County of New Kent in the Board Room of the County Office Building in New Kent, Virginia, on the 11<sup>th</sup> of April, 2005:

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Present	Vote
Mark E. Hill	Aye
D. M. Sparks	Absent
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye

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Motion was made by Mr. Trout, which carried 4:0 to adopt the following ordinance:

**AN ORDINANCE TO REPEAL AND RE-ENACT  
CHAPTER 66, ARTICLE V, DIVISION 2 OF THE  
NEW KENT COUNTY CODE TO PROVIDE FOR THE  
TAXATION OF ALL LOCAL TELECOMMUNICATIONS SERVICES  
(INCLUDING THE TWO-WAY LOCAL TRANSMISSION OF  
MESSAGE THROUGH USE OF SWITCHED LOCAL TELEPHONE  
SERVICES, TELEGRAPH SERVICES; TELETYPEWRITER; LOCAL  
CELLULAR MOBILE RADIO TELECOMMUNICATION SERVICES;  
SPECIALIZED MOBILE RADIO; RADIO STATIONARY  
TWO-WAY RADIO OR ANY OTHER FORM OF TWO-WAY MOBILE  
AND PORTABLE COMMUNICATION) AS PROVIDED  
BY CODE OF VIRGINIA SECTION 58.1-3812.**

**WHEREAS**, as provided by Code of Virginia § 58.1-3812, the County may impose a tax on all taxable purchases by a consumer of local mobile telecommunication service if the consumer's service address is located in the County; and

**WHEREAS**, the County currently does not tax all local telecommunication services although it taxes local telephone services; and

**WHEREAS**, the Board believes that it is in the County's best interest to tax all local telecommunications equally as provided by law,

**NOW THEREFORE BE IT ORDAINED** that pursuant to the authority granted under §58.1-3812 of the Code of Virginia, the Board of Supervisors hereby repeals and re-enacts Chapter 66, Article V, Division 2 of the New Kent County Code as follows:

## **DIVISION 2. TELEPHONE, ELECTRICAL AND GAS SERVICE**

### **Sec. 66-241. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Commercial and industrial service* means the service provided by the owner or tenant of property used for commercial, industrial and all other purposes, who pays for utility service for such property, except that, with respect to local telephone service, such term shall mean any person furnished service classified as "business" under tariffs filed with the state corporation commission.

*Local telecommunication service* means services including but not limited to the two-way local transmission of message through use of switched local telephone services, telegraph services; teletypewriter; local cellular mobile radio telecommunication services; specialized mobile radio; radio stationary two-way radio or any other form of two-way mobile and portable communication.

*Local telephone service* (subject to the exclusions stated in Code of Virginia, § 58.1-3812) means any service subject to federal taxation as local telephone service as that term is defined in section 4252 of the Internal Revenue Code of 1986, as amended, or any successory statute.

*Mobile service consumer* means a person having a telephone number for local mobile telecommunications service who has made a taxable purchase of such service or on whose behalf another person has made a taxable purchase of such service.

*Mobile telecommunications service* means commercial mobile radio service, as defined in 47 C.F.R. § 20.3, as in effect on June 1, 1999.

*Person* means individuals, firms, partnerships, associations, corporations, and combinations of whatever form and character.

*Place of primary use* means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.

*Public safety answering point* means a communications facility equipped and staffed on a twenty-four-hour basis to receive and process 911 calls.

*Purchaser* means every person who purchases a utility service.

*Residential user* means the owner, occupant or tenant of private residential property who pays for utility service in or for such property, except that, with respect to local telephone service, such term shall mean any person furnished service classified as "residential" under tariffs filed with the state corporation commission.

*Seller* means every person, whether a public service corporation or a municipality or private corporation or not, who sells or furnishes a utility service.

*Service Address* means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a Purchaser. However, if the service address is not a defined location, as in the case of maritime systems, air-to-ground systems and the like, service address shall mean the location of the Purchaser's primary use of the telecommunication equipment within the licenses service area. In the case of mobile telecommunications service, service address shall mean the street address representative of where the Purchaser's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the Purchaser and within the licensed service area of the Seller.

*Taxable purchase* means the acquisition of telecommunication services for consumption or use; however, taxable purchase does not include (i) the provision of telecommunications among members of an affiliated group of entities by a member of the group for their own exclusive use and consumption and (ii) the purchase of telecommunications for resale in the subsequent provision of telecommunications, including, without limitation, carrier access charges, right of access charges, and charges for use of intercompany facilities; however, the acquisition of telecommunications by a provider of enhanced services is not the purchase of telecommunications for resale, even when the cost of the telecommunications is separately stated to the purchaser of the enhanced services, as long as the primary object of the purchase of the telecommunications by the provider is for the provision of enhanced services and not telecommunications. A person may make tax-free purchases of telecommunications for resale if the person provides to the service provider a sworn affidavit indicating that the person's purchases are nontaxable sales for resale.

*Utility services* means local telephone services, local telecommunications services (provided the Purchaser's service address is located within the County) electrical services and gas services, furnished within the corporate limits of the county.

#### **Sec. 66-242. Levy of tax.**

(a) *Local telecommunications service.* There is hereby imposed and levied by the County upon each and every purchaser of local telephone service a tax in the amount of twenty percent of the charge (exclusive of any federal tax thereon) made by the seller against the purchaser with respect to each local telecommunications service. If any monthly bill submitted by any seller shall exceed \$15.00 for a residential user, there shall be no tax computed on so much of such bill as shall exceed \$15.00. If any monthly bill submitted by any seller for commercial or industrial service shall exceed \$100.00, there shall be no tax computed on so

much of such bill as shall exceed \$100.00. Notwithstanding the preceding, the tax on local mobile telecommunications service shall be 10% of the monthly gross charge to the consumer, but shall not be applicable to any amount so charged in excess of \$30 per month for each mobile telecommunications service number billed to a mobile service consumer. The tax for local telecommunications service shall be collected by the seller from the purchaser and shall be paid by the purchaser unto the seller for the use of the county at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and seller. Bills shall be considered monthly bills if submitted 12 times per year for periods of approximately one month each. This tax shall not become effective until 120 days after written notice by certified mail is given to the registered agent of service providers required to collect the tax of the implementation of the tax and its rate.

(b) *Electric utility suppliers.* Effective with the first bill for electric energy rendered for meter readings on or after January 1, 2001, by an electric utility supplier, supplying electric energy delivered to an ultimate consumer in the county, there is hereby imposed a tax on such electric energy rates as follows:

(1) *Residential customer.* \$0.70 per month plus \$0.07436 per kilowatt-hour (kwh) delivered by a service provider, not to exceed a maximum tax of \$1.50 per month.

(2) *Commercial customers.* \$1.15 per month plus \$0.007640 per kilowatt-hour (kwh) delivered by a service provider, not to exceed a maximum tax of \$10.00 per month.

(3) *Industrial customers.* \$1.15 per month plus \$0.007040 per kilowatt-hour (kwh) delivered by a service provider, not to exceed a maximum charge of \$10.00 per month.

(c) *Natural gas.* In accordance with Code of Virginia, § 58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by class of consumers as such term is defined in Code of Virginia, § 58.1-3814J, as set forth in this subsection. Effective with the first bill for gas delivered rendered on or after January 1, 2001, the rate of tax on the gas delivered to an ultimate consumer shall be as follows:

(1) *Residential consumers.* Such tax on residential consumers of natural gas shall be ten percent times the minimum monthly charge imposed upon the consumer plus the rate of \$0.08273 per CCF delivered monthly to residential customers, not to exceed \$1.50 per month.

(2) *Commercial/industrial consumers.* Such tax shall be ten percent times the minimum monthly charge imposed upon the consumer plus the rate of \$0.05945 on each CCF delivered monthly to commercial/industrial consumers, not to exceed \$10.00 per month.

(3) *Multiple family dwelling using master meter.* In the case of any apartment house or other multiple family dwelling using gas or electric service through a master meter or meters the sum of 15.00 shall be multiplied by the number of dwelling units served.

**Sec. 66-243. Collection of tax.**

It shall be the duty of every seller in acting as the tax collecting medium or agency for the county to collect from the purchaser for the use of the county the tax hereby imposed and levied at the time of collecting the purchase price charged. Taxes for local telecommunication services shall be stated as a distinct item separate and apart from the monthly charge. Taxes collected during each calendar month shall be reported by each seller to the commissioner of the revenue, and each seller shall remit the amount of tax shown by such report to have been collected to the county treasurer on or before the last day of the first calendar month thereafter, together with the name and address of any purchaser who has refused to pay his tax. The required reports shall be in the form prescribed by the commissioner of the revenue.

**Sec. 66-244. Records.**

Each and every seller shall keep complete records showing all purchases of utility services in the county, the price charged against each purchaser with respect to each purchase, the date of billing, the date of payment, and the amount of tax imposed. Such records shall be kept open for inspection and copying, by the duly authorized agents of the county at reasonable times.

**Sec. 66-245. Exemptions.**

The United States of America, the state and the political subdivisions, boards, commissions and authorities of the state, are hereby exempted from the payment of the tax imposed and levied by this division with respect to the purchase of utility services used by such governmental agencies. Public safety answering points, as defined herein, are also exempt from the tax imposed and levied pursuant to section 66-242(a) of this division.

**Sec. 66-246. Application of tax.**

The tax hereby imposed and levied on purchasers with respect to local exchange telephone service shall apply to all charges made for local exchange telephone service, except local messages which are paid for by inserting coins in coin-operated telephones. The tax hereby imposed and levied shall not apply to the purchase of bottled gas or bills for unmetered electric service.

**Sec. 66-247. Collections on other than monthly basis.**

In all cases where the seller collects the price for utility services other than on a monthly basis, the tax hereby imposed and levied may be computed on the aggregate amount of purchases during the period billed for, provided that the amount of tax to be collected shall be the nearest whole cent to the amount computed, and such tax for residential users shall not exceed the sum of \$1.50 multiplied by the number of months, or a portion, covered by such bill.

**Sec. 66-248. Penalties.**

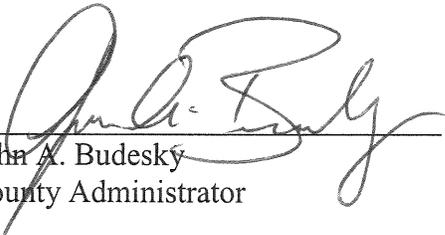
Any purchaser failing, refusing or neglecting to pay the tax hereby imposed or levied and any seller violating the provisions of this division, and any officer, agent or employee of any seller violating the provisions of this division, shall be guilty of such penalties as are allowed by law. . Any criminal prosecution brought under this section shall not be deemed to relieve any purchaser or seller from any civil liability for the tax due. The collection of all consumer utility taxes may be enforced by any remedy allowed under the laws of the state. Any such tax not paid when due shall bear interest at the rate of ten percent per annum commencing with the due date of the purchase price of the utility services upon which the tax was levied.

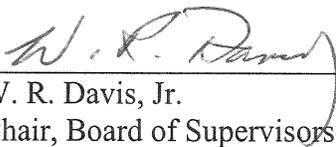
**Secs. 66-249--66-270. Reserved.**

**NOW THEREFORE BE IT FURTHER ORDAINED** that in this Ordinance be codified in the Code of New Kent County.

This Ordinance shall take effect immediately upon its adoption.

Adopted this 11<sup>th</sup> day of April, 2005.

  
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John A. Budesky  
County Administrator

  
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W. R. Davis, Jr.  
Chair, Board of Supervisors