

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Dir. of Finance **DATE:** March 18, 2003
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "AN ORDINANCE IMPOSING A SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX", as presented.



SUMMARY OF ITEM:

Adoption of the attached ordinance will impose a simplified municipal telecommunications tax at the rate of five percent (5%) of the gross charge for telecommunications purchased at retail from a retailer.

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____

AN ORDINANCE IMPOSING A SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety, and welfare of its citizens; and

WHEREAS, the Village imposes certain taxes and fees related to telecommunications services; and

WHEREAS, pursuant to 65 ILCS 5/8-11-2 the Village enacted a Telecommunications Tax Ordinance, as amended, which imposes a telecommunications tax at a rate of 4.5% of gross charges; and

WHEREAS, pursuant to 35 ILCS 635/1 et seq. the Village enacted the Telecommunications Infrastructure Maintenance Fee Ordinance, as amended, which imposes a telecommunications infrastructure fee at a rate of 4.5% of gross charges; and

WHEREAS, on February 8, 2002, the Governor of the State of Illinois signed into law Public Act 92-0526, entitled the Simplified Municipal Telecommunications Tax Act, providing that effective January 1, 2003, the municipal telecommunications tax and municipal telecommunications infrastructure maintenance fee will be replaced with a simplified municipal telecommunications tax at a rate of up to 6% of gross charges in municipalities; and

WHEREAS, this Ordinance is intended to implement the provisions of Public Act 92-0526, including the imposition of the simplified telecommunications tax in lieu of the existing telecommunications tax and telecommunications infrastructure maintenance fee; and

WHEREAS, the simplified telecommunications tax will have the benefit of easing burdens on businesses by reducing the number of filings and payments required each year; and

WHEREAS, this Ordinance is intended to impose the tax authorized by the Act providing for a single municipal imposed telecommunications tax which will be collected by the Illinois Department of Revenue;

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Village Council of the Village of Downers Grove as follows:

SECTION 1. Recitals. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2. Repeal of Old Article VIII of Chapter 21 imposing a telecommunications tax under 65 ILCS 5/8-11-2 as of January 1, 2003.

(a) Chapter 21 of the Downers Grove Municipal Code is hereby amended by repealing Old Article VIII of Chapter 21 in its entirety as applied to telecommunication taxes, effective January 1, 2003, to be replaced by the tax imposed by this Ordinance pursuant to the Simplified Municipal Telecommunications Tax Act.

(b) If Public Act 92-0526, entitled the Simplified Municipal Telecommunications Tax Act, is repealed or becomes ineffective for any reason, or if this New Article VIII of Chapter 21 is repealed or becomes ineffective for any reason, then Old Article VIII of Chapter 21 shall be deemed in full force and effect as of the date Public Act 92-0526 or New Article VIII of Chapter 21 is repealed or becomes ineffective.

SECTION 3. Repeal of Old Article IX of Chapter 21 imposing a Telecommunications Infrastructure Maintenance Fee as of January 1, 2003.

(a) Chapter 21 of the Downers Grove Municipal Code is hereby amended by repealing Article IX of Chapter 21 the Telecommunications Infrastructure Maintenance Fee Ordinance in its entirety, effective January 1, 2003, to be replaced by this Ordinance pursuant to the Simplified Municipal Telecommunications Tax Act.

(b) If Public Act 92-0526, entitled the Simplified Municipal Telecommunications Tax Act, is repealed or becomes ineffective for any reason, or if this New Article VIII of Chapter 21 is repealed or becomes ineffective for any reason, then Old Article IX of Chapter 21 shall be deemed in full force and as of the date Public Act 92-0526 or is repealed or becomes ineffective.

SECTION 4. Adoption of Tax. Chapter 21 of the Municipal Code of the Village of Downers Grove shall be amended by the addition of New Article VIII that will read as follows: (Additions are indicated by shading; deletions by ~~strikeout~~.)

SECTION 5. That Chapter 21, Article VIII of the Downers Grove Municipal Code is hereby amended as follows:

21-800ART. Article VIII. Telecommunications Tax

21-800SEC. Telecommunications Tax.

The telecommunications tax imposed by the following Sections of this Ordinance shall be known as the "Downers Grove ~~Simplified Municipal~~ Telecommunications Tax" and is imposed in addition to all other taxes imposed in this Chapter, or elsewhere in this Village, the State of Illinois or any other political subdivision thereof. The Downers Grove Utility Tax found in Article VII, Sections 21-700, et seq. of the Downers Grove Municipal Code shall not apply to transactions or activities included in the Downers Grove Telecommunications Tax.

21-801. Definitions.

~~For purposes of this Article, the following definitions shall apply:~~

~~(1) "Amount paid" means the amount charged to the taxpayer's service address in the Village regardless of where such amount is billed or paid.~~

~~(2) "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in the Village and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. However, "gross charge" shall not include:~~

~~(a) any amounts added to a purchaser's bill because of a charge made pursuant to: (i) the tax imposed by this Section, (ii) additional charges added to a purchaser's bill pursuant to Section 9-222 of the Public Utilities Act, (iii) the tax imposed by the Telecommunications Excise Tax Act, or (iv) the tax imposed by Section 4251 of the Internal Revenue Code;~~

- ~~(b) charges for a sent collect telecommunication received outside of the Village;~~
- ~~(c) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time sharing agreement;~~
- ~~(d) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;~~
- ~~(e) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;~~
- ~~(f) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Section has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;~~
- ~~(g) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made); or~~
- ~~(h) charges paid by inserting coins in coin operated telecommunication devices.~~
- ~~(3) "Interstate telecommunications" means all telecommunications that either originate or terminate outside this State.~~
- ~~(4) "Intrastate telecommunications" means all telecommunications that originate and terminate within this State.~~
- ~~(5) "Ordinance", except where other provisions are clearly intended, the term "Ordinance" as used in this Article shall mean Downers Grove Telecommunications Tax Ordinance as set forth in Article VIII, Sections 21-800, et seq. as now or hereafter amended.~~
- ~~(6) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, county, or other political subdivision of this State.~~
- ~~(7) "Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.~~
- ~~(8) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section.~~
- ~~(9) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in the State of Illinois.~~
- ~~(10) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the tax has already been paid to a retailer and the gross charge made by one such corporation to another such corporation is not~~

greater than the gross charge paid to the retailer for their use or consumption and not for resale.

(11) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. If this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, air to ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunication equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

(12) "Taxpayer" means a person who individually or through his agents, employees, or permittees, engages in the act or privilege of originating in the Village or receiving in the Village telecommunications and who incurs a tax liability under any ordinance authorized by this Section.

(13) "Telecommunications", in addition to the usual and popular meaning, includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, cellular mobile telecommunications service, specialized mobile radio services, paging service, or any other form of mobile and portable one way or two way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications.

(14) "Village" means the Village of Downers Grove.

As used in this Article, the following terms shall have the following meanings:

(a) "Amount paid" means the amount charged to the taxpayer's service address in this municipality regardless of where such amount is billed or paid.

(b) "Department" means the Illinois Department of Revenue.

(c) "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this municipality and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this municipality, charges for the channel mileage between each channel point within this municipality, and charges for that portion of the interstate inter-office channel provided within Illinois. However, "gross charge" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made pursuant to: (i) the tax imposed by this Ordinance, (ii) the tax imposed by the Telecommunications Excise Tax Act, (iii) the tax imposed by Section 4251 of the Internal Revenue Code, (iv) 911 surcharges, or (v) charges added to customers' bills pursuant to the provisions of Section 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in those provisions of the Public Utilities Act;

(2) charges for a sent collect telecommunication received outside of such municipality;

(3) charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;

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

(5) charges to business enterprises certified as exempt under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Ordinance has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;

(7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

(8) charges paid by inserting coins in coin-operated telecommunication devices; or

(9) amounts paid by telecommunications retailers under the Telecommunications Infrastructure Maintenance Fee Act.

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

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

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

(g) "Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.

(h) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section. The Department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion.

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

(j) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

(k) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, and maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

(l) "Taxpayer" means a person who individually or through his or her agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in a municipality and who incurs a tax liability as authorized by the Ordinance.

(m) "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll, and wide area telephone service, private line services, channel services, telegraph services, teletypewriter, computer exchange services, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. As used in this Ordinance, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale. Prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Ordinance. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupations Tax Act.

21-802. Tax Imposed.

(1) A tax is imposed upon:

(a) The act or privilege of originating in the Village or receiving in the Village intrastate telecommunications by a person at the rate of four and one half percent (4.5%) of the gross charge for such telecommunications purchased at retail from a retailer by such person.

(b) The act or privilege of originating in the Village or receiving in the Village interstate telecommunications by a person at the rate of four and one half percent (4.5%) of the gross charge for such telecommunications purchased at retail from a retailer by such person.

(2) The tax imposed in this Ordinance is not imposed on any act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

(3) To prevent actual multi-state taxation of the act or privilege that is subject to taxation under Section 21-802(1)(b), any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against the tax authorized by Section 21-802(1)(b) to the extent of the amount of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in the State of Illinois.

(4) Carrier access charges, right of access charges, charges for use of inter company facilities, and

~~all telecommunications resold in the subsequent provision used as a component of, or integrated into, end-to-end telecommunications service are sales for resale and are not subject to the tax imposed by this Ordinance.~~

~~A tax is hereby imposed upon any and all the following acts or privileges:~~

~~(a) The act or privilege of originating in the municipality or receiving in the municipality intrastate telecommunications by a person at a rate of five percent (5%) of the gross charge for such telecommunications purchased at retail from a retailer.~~

~~(b) The act or privilege of originating in the municipality or receiving in the municipality interstate telecommunications by a person at a rate of five percent (5%) of the gross charge for such telecommunications purchased at retail from a retailer. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this subsection, any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Section to the extent of the amount of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in this State.~~

~~(c) The tax imposed by this Ordinance is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the municipality.~~

21-803. Collection of Tax by Retailers.

~~(1) The tax authorized by Section 21-802 shall be collected from the taxpayer by a Retailer maintaining a place of business in Illinois and making or effectuating a sale at Retail and shall be remitted by the Retailer to the Village.~~

~~(2) Any Downers Grove Telecommunications Tax required to be collected pursuant to this Ordinance and any such tax collected by the Retailer shall constitute a debt owed by the Retailer to the Village.~~

~~(3) Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use in the manner prescribed by this Ordinance.~~

~~(4) The tax authorized by this Ordinance shall constitute a debt of the purchaser to the Retailer that provides taxable services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for taxable services.~~

~~(5) If the Retailer fails to collect the tax from a taxpayer, the taxpayer shall pay the tax directly to the Village as provided in Section 21-806.~~

~~(6) The Village shall, upon application, authorize the collection of this tax by any Retailer not maintaining a place of business in this state who, to the satisfaction of the Village Manager, furnishes adequate security to insure collection and payment of the tax. Such Retailer shall be issued, without charge, a permit to collect the tax imposed by this Chapter. When so authorized, it shall be the duty of the Retailer to collect the tax upon all of the gross charges for telecommunications originated or received in the Village in the same manner, and subject to the same requirements, as a Retailer maintaining a place of business in Illinois.~~

~~(7) The Downers Grove Telecommunication Tax authorized by this Ordinance shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.~~

~~(a) The tax authorized by this Ordinance shall be collected from the taxpayer by a retailer maintaining a place of business in this State and shall be remitted by such retailer to the Department. Any tax required to be collected pursuant to or as authorized by this Ordinance and any such tax collected by such retailer and required to be remitted to the Department shall constitute a debt owed by the retailer to the State. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use, in the manner prescribed by the Department. The tax authorized by this Ordinance shall constitute a debt of the taxpayer to the retailer until paid, and, if unpaid, is recoverable at law in the same manner as the original~~

charge for such sale at retail. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the Department in the manner provided by the Department.

(b) Whenever possible, the tax authorized by this Ordinance shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.

21-804. ~~Registration of Retailers~~ Returns to Department.

(1) ~~Every Retailer maintaining a place of business in this state on the effective date of this Ordinance shall register with the Village within 30 days after that date.~~

(2) ~~Every person becoming a Retailer maintaining a place of business in this state after the effective date of this Ordinance shall register with the Village within 30 days after commencing that business.~~

On or before the last day of August, 2003, and on or before the last day of every month thereafter, the tax imposed under this Ordinance on telecommunication retailers shall be returned with appropriate forms and information as required by the Department pursuant to the Illinois Simplified Municipal Telecommunications Tax Act (Public Act 92-526, Section 5-50) and any accompanying rules and regulations created by the Department to implement the Act.

21-805. ~~Filing Returns and Remittance by Retailers~~ Resellers.

~~On or before the last day of each calendar month, every Retailer maintaining a place of business in this state and every Retailer authorized by the Village Manager to collect the tax imposed by this Chapter shall file with the Village a remittance return and remit all applicable tax for the preceding calendar month. The return shall be filed on a form prescribed by the Village Finance Director containing such information as he or she may reasonably require.~~

(a) If a person who originates or receives telecommunications claims to be a reseller of such telecommunications, such person shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for the tax authorized by this Article on any of such purchases and shall furnish such additional information as the Department may reasonably require.

(b) Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to the applicant. The Department may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunication tax-free when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

(c) Except as provided hereinabove in this Section, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.

21-806. ~~Filing Returns/Payments by Taxpayers~~ Rebates and exemptions [OPTIONAL].

(1) ~~When a Taxpayer does not pay the tax imposed by this Ordinance to a Retailer, the Taxpayer shall file with the Village a tax return and pay the tax upon that portion of gross charges paid to the Retailer during the preceding calendar month on or before the last day of the month following that month. The return shall be filed on a form prescribed by the Village.~~

(2) ~~When a Taxpayer pays the tax imposed by this Ordinance directly to the Village, the Village, at the request of the Taxpayer, shall issue an appropriate receipt to the Taxpayer showing the amount of tax paid.~~

~~This Article is optional and each subsection can be adopted or not allowing for the following rebates and exemptions which must be paid to the entity claiming the rebate by the municipality:~~

(1) To the extent that the municipality's territory includes part of another unit of local government or a school district, the municipality may, by separate ordinance, rebate some or all of the amount of the tax authorized by this Ordinance paid by the other unit of local government or school district. Any such rebate shall be paid by the municipality directly to the other unit of local government or school district qualifying for the rebate as determined by the municipality's ordinance, which shall not be filed with the Department.

(2) The municipality may, by separate ordinance, rebate some or all of the amount of the tax authorized by this Ordinance paid by persons 65 years of age or older. Any tax related to such rebate shall be rebated from the municipality directly to persons qualified for the rebate as determined by the municipality's ordinance, which shall not be filed with the Department.

21-807. Resale Numbers Severability.

(1) If a person who originates or receives telecommunications in the Village claims to be a reseller of telecommunications, that person shall apply to the Village for a resale number. The applicant shall state facts showing why it is not liable for the Village Telecommunications Tax imposed by this Chapter on any purchases of telecommunications and shall furnish such additional information as the Village may reasonably require.

(2) Upon approval of the application, the Village shall assign a resale number to the applicant and shall certify the number to the applicant.

(3) The Village may cancel the resale number of any person if the number: (1) was obtained through misrepresentation, (2) is used to originate or receive telecommunications tax free when such telecommunications are not for resale, or (3) is no longer necessary because the person has discontinued making resales.

(4) The act or privilege of originating or receiving telecommunications in the Village shall not be made tax free on the ground of being a sale for resale unless the person has an active resale number issued by the Village and furnishes that number to the Retailer in connection with certifying to the Retailer that a sale is nontaxable as the sale for resale.

If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance.

21-808. Maintaining Books and Records Effective Date.

Every Retailer maintaining a place of business in this state, every Retailer authorized by the Village to collect the tax imposed by this Chapter, and every Taxpayer shall keep accurate books and records of its business or activity, including original source documents and books of entry noting the transactions that gave rise, or may have given rise, to any tax liability or exemption. All such books and records shall be kept in the English language and, at all times during business hours of the day, shall be subject to and available for inspection by the Village.

This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law, provided, however, that (1) Section 2 and Section 3 shall take effect for all bills issued on or after January 1, 2003, (2) the tax provided for herein shall take effect for all bills issued on or after the first day of July, 2003 and (3) any amounts due or payable to the municipality for any tax periods ending prior to the first day of January, 2003, shall nevertheless remain payable as if this Ordinance had not be adopted. Copies of this Ordinance shall be certified and sent to the Illinois Department of Revenue prior to April 1, 2003.

21-809. Severability through 21-899. Reserved.

If any provision of this Ordinance or the application thereof is held unconstitutional or otherwise

invalid, such occurrence shall not affect other provisions of this Chapter, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Chapter. In particular, if subsection (1)(b) of Section 21-802 of this Ordinance is declared unconstitutional or otherwise invalid, the tax imposed under subsection (1)(a) of Section 21-802 shall remain in full force and effect.

21-810. Effective Date.

This Ordinance shall take effect after publication and the tax provided for herein shall be based on the gross charges, as herein defined, actually paid for the act or privilege of originating or receiving telecommunications in the Village on or after July 1, 1995.

21-811. through 21-899. Reserved.

SECTION 6. That Chapter 21, Article IX of the Downers Grove Municipal Code is hereby repealed as follows:

21-900ART. Article IX. Telecommunications Infrastructure Maintenance Fee Reserved.

21-900SEC. Definitions Reserved.

As used in this Article, the following terms shall have the following meanings:

(a) "~~Gross Charges~~" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the Village, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "~~Gross charges~~" for private line service shall include charges imposed at each channel point within the Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter office channel provided within the Village. However, "~~gross charges~~" shall not include:

(1) Any amounts added to a purchaser's bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;

(2) Charges for a sent collect telecommunication received outside the Village;

(3) Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time sharing agreement;

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

~~(5) Charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Village;~~

~~(6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;~~

~~(7) Bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);~~

~~(8) Charges paid by inserting coins in coin operated telecommunications devices; or~~

~~(9) Charges for telecommunications and all services and equipment provided to the Village.~~

~~(b) "Public Right of Way" means any municipal street, alley, water or public right of way dedicated or commonly used for utility purposes, including utility easements wherein the Village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public Right of Way" shall not include any real or personal Village property that is not specifically described in the previous sentence and shall not include Village buildings and other structures or improvements, regardless of whether they are situated in the public right of way.~~

~~(c) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.~~

~~(d) "Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.~~

~~(e) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air to ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.~~

~~(f) "Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end to end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all~~

~~telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.~~

~~(g) — "Telecommunications provider" means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right of way that is used or designed to be used to transmit telecommunications in any form.~~

~~(h) — "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Village, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the Village.~~

~~(i) — "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §332(e)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.—~~

~~21-901. Registration of telecommunications providers through 21-999. Reserved.~~

~~(a) — Every telecommunications provider as defined by this Article shall register with the Village within 30 days after the effective date of this Article or becoming a telecommunications provider, whichever is later, on a form to be provided by the Village. Provided, any telecommunications retailer that has filed a return pursuant to section 21-904(e) of this Article shall be deemed to have registered in accordance with this Section.~~

~~(b) — Every telecommunications provider who has registered with the Village pursuant to section 21-901(a) has an affirmative duty to submit an amended registration form or current return as required by section 21-904(e), as the case may be, to the Village within 30 days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the Village.—~~

~~21-902. Reserved.~~

~~21-903. Reserved.~~

~~21-904. Reserved.~~

~~21-905. Compliance With Other Laws.~~

~~Nothing in this Article shall excuse any person or entity from obligations imposed under any law, including but not limited to:~~

~~(a) — generally applicable taxes; and~~

~~(b) — standards for construction on, over, under, or within, use of or repair of the public rights of way, including standards relating to free standing towers and other structures upon the public rights of way, as provided; and~~

~~(c) — any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights of way;~~

and

~~(d) — compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right of way.~~

21-906. Existing Franchises and Licenses.

~~Any franchise, license, or similar agreements between telecommunications retailers and the Village entered into before the effective date of this Article regarding the use of public rights of way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.~~

21-907. Penalties.

~~Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Article shall be subject to fine in accordance with the general penalty provisions of the Village Municipal Code.~~

21-908. Enforcement.

~~Nothing in this Article shall be construed as limiting any additional or further remedies that the Village may have for enforcement of this Article.~~

21-909. Severability.

~~If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.~~

SECTION 7. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 8. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____
Village Clerk

[telecom]